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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 244

THE ALABAMA & VICKSBURG RAILWAY COMPANY,
CANAL COMMERCIAL TRUST & SAVINGS BANK, FELIX
E. GUNTER, ET AL., PLAINTIFFS IN ERROR,

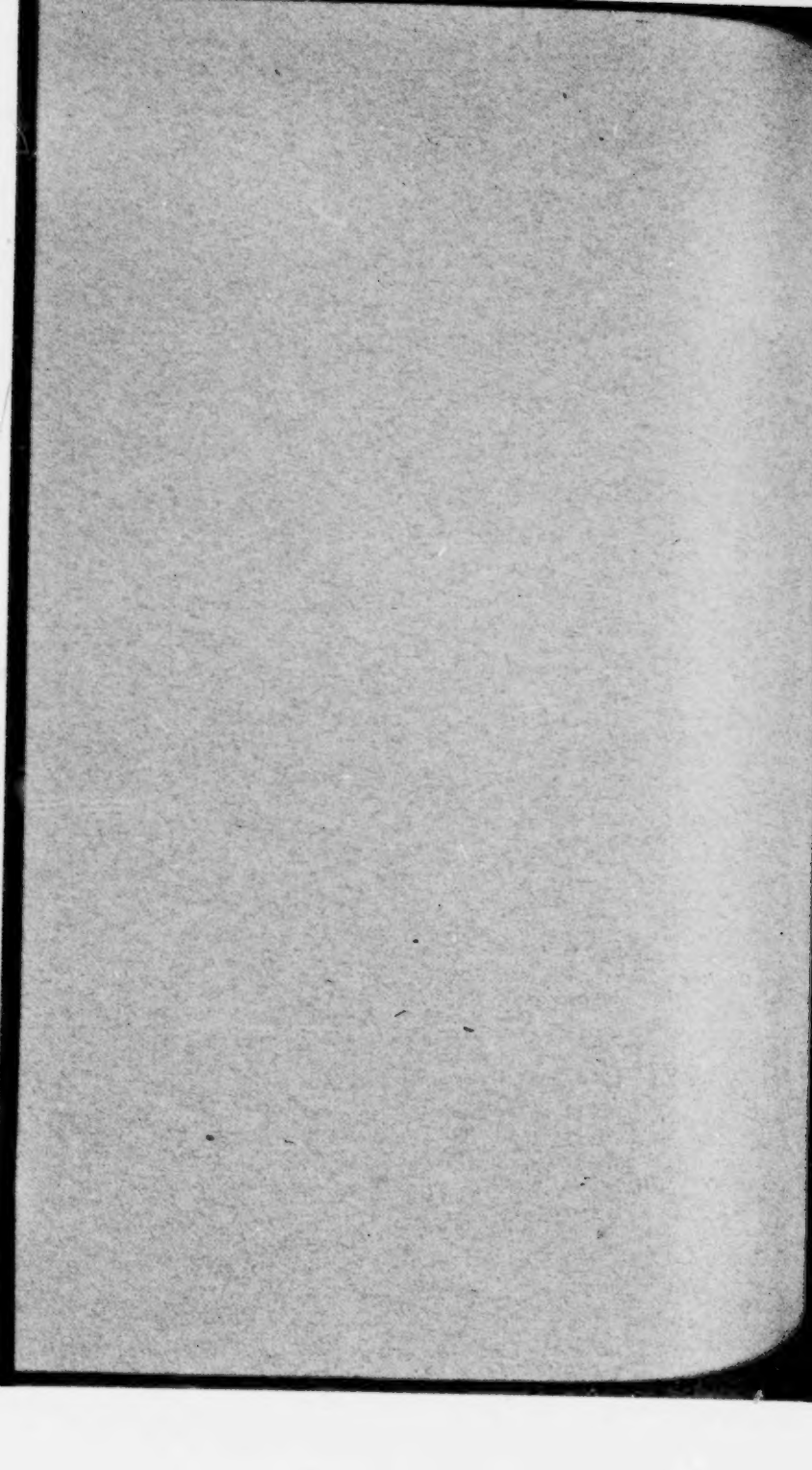
vs.

JACKSON & EASTERN RAILWAY COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FILED JANUARY 13, 1926

(30,804)



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CANAL COMMERCIAL TRUST & SAVINGS BANK, FELIX
E. GUNTER, ET AL., PLAINTIFFS IN ERROR,

vs.

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ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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[fol. 1]

CAPTION—Omitted

[fol. 2] **IN CHANCERY COURT OF LAUDERDALE COUNTY,
MISSISSIPPI**

THE ALABAMA & VICKSBURG RAILWAY CO., THE CANAL COMMERCIAL TRUST & SAVINGS BANK OF NEW ORLEANS, and Felix E. Gunter, Complainants

v.

THE JACKSON & EASTERN RAILWAY COMPANY, Defendant

BILL OF COMPLAINT—Filed March 21, 1922

To the Chancery Court of Lauderdale County, Mississippi, Hon. Geo. C. Tann, Chancellor, sitting in equity, in and for said County and State, at Meridian, Mississippi:

Your orators, the complainants, respectfully show to the Court:

First. That the complainant, Alabama & Vicksburg Railway Company, is a corporation of the State of Mississippi, duly created and organized under the laws of the State of Mississippi in the year 1889, and it is fully authorized to carry on the business of a railway company and is a common carrier by railway and has been continuously engaged in the operation of its railway, hereinafter described, since its creation and organization. That the complainant, Canal Commercial Trust & Savings Bank is a corporation of the State of Louisiana, domiciled at New Orleans, Louisiana, and the complainant, Felix E. Gunter, is a resident citizen of the City of New Orleans, Louisiana.

Second. The complainant, Alabama & Vicksburg Railway Company, is the owner and is duly operating a line of railway as a common carrier of freight and passengers, its railway line extending from Vicksburg, Mississippi, on the west, to Meridian, Mississippi, on the east, and passes through Warren, Hinds, Rankin, Scott and Newton Counties, Mississippi, and that part of the County of Lauderdale between the Newton County line to the City of Meridian in Lauderdale County.

Said complainant has itself been in the actual, exclusive, hostile and adverse possession of its said railway from 1889 until the present time, thirty three years, and is now in such possession and control. Those under whom said complainant acquired its title to said railway and said complainant have had the exclusive, hostile and adverse possession of said railway for more than seventy years, and said railway, its tracks and right of way have been devoted and used for public purposes for more than the number of years last mentioned. The complainants, Canal Commercial Trust & Savings Bank and Felix E. Gunter are the trustees in a mortgage executed by said Alabama & Vicksburg Railway Company March 23, 1921, to secure

certain bonds issued at said date by the complainant Railway Company, and are interested in this suit because as trustees in said mortgage they represent the owners of the bonds secured thereon and the railway, right of way, etc., of said railway company, and parts thereof hereinafter particularly mentioned are conveyed by said mortgage to the complainants, Canal Commercial Trust Savings Bank and Gunter.

Third. The defendant, Jackson & Eastern Railway Company, is a corporation of the State of Mississippi, domiciled at Meridian, Lauderdale County, Mississippi; it was created and organized within the last few years, since the year 1908, and since the adoption of the Mississippi Code of 1906, and is given only the powers and privileges specified and enumerated in the chapter of the Code entitled "Railroads", and Sections 4080 to 4099, inclusive, of said code.

Fourth. Your orators, the complainants, further show that recently the defendant, Jackson & Eastern Railway Company, instituted a proceeding based upon the provisions of the Chapter of the said Mississippi Code of 1906 entitled "Eminent Domain" Sections 1854 to 1877 inclusive, of said Code, to condemn and take from the complainant, Alabama & Vicksburg Railway Company, and its complainants a part of the complainant railway company's right of way and road bed, including a part of its main line of railway, cross-ties, and iron rails, and to divest said complainant railway company of a part, and a necessary part, of its road bed, right of way, cross ties, and iron rails. The defendant's eminent domain proceedings against complainants to condemn its road bed and other property mentioned was initiated by the filing with the Clerk of the Circuit Court of Rankin County, Mississippi, on, to-wit, the 25th day of February, 1922, a petition praying for the condemnation of complainant's said property and the defendant has caused the Clerk of said Circuit Court to issue process for complainants, returnable on Friday, March 24, 1922, before a justice of the peace of said Rankin County, Mississippi. The complainant's property, right of way, and road bed sought by the defendant to be condemned has [fol. 5] located upon it the cross-ties and iron rails of complainant and the whole of it has been for years past and now is devoted to public use as a railroad and the instrumentalities of a common carrier, and is not "private property" within the meaning of the laws of the State of Mississippi relating to Eminent Domain. The complainant's property sought to be condemned by the defendant is described in defendant's Eminent Domain proceeding and in the petition therefor as follows, viz.:

A strip of land of varying widths extending from Station 0/00 on the survey enumeration of the applicant, the Jackson & Eastern Railway Company, which 0/00 station is located on the center line of the Alabama & Vicksburg Railway Company's track 1,797 feet East from the first block signal semaphore east of the Alabama & Vicksburg Railway Company's bridge over Pearl River in an easterly direction along the surveyed line of the Jackson & Eastern

Railway Company, an average distance of 325 feet, the widths of said strip to be condemned are: At station 0 00 16 feet, being 8 feet on each of the center line; at station 0/50 21 feet, being 8 feet on the right and 13 feet on the left side of the center line of the Jackson & Eastern Railway Company's survey; at station 1/00 26 feet, being 8 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at station 1/50 27 feet wide, being 9 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's [fol. 6] survey; at station 2/00 30 feet wide, being 11 feet on the right and 19 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at station 2/50 35 feet wide being 15 feet on the right and 20 feet in the left of the center line of the Jackson & Eastern Railway Company's survey; at station 3/00 30 feet wide, being 20 feet on the right and 10 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at station 3/25 20 feet wide, being all on the right of the center line of the Jackson & Eastern Railway Company's survey; and at station 3/75 coming to a point on the north right of way line of the Alabama & Vicksburg Railway Company's said survey, containing two hundred and thirty-two thousandths (.232) acres, and lies in the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, Section 14, Township 5, North Range 1 East, Rankin County, Mississippi.

A copy of defendant's said petition including a copy of the plat or map or diagram made Exhibit "A" thereto is herewith filed, marked Exhibit "B" to this Bill of Complaint, and is prayed to be taken and received as a part of the same.

Your orators also file herewith a blue print diagram of the right of way and road bed of complainant, Alabama & Vicksburg Railway Company, showing the part thereof, the property of complainants, sought by the said defendant to be condemned, and showing that not less than seventy-five feet of complainant's main line of railway, its road bed, cross ties and iron rails are sought to be taken away from it and the title thereto divested from complainants and in- [fol. 7] vested in the defendant, Jackson & Eastern Railway Company. May said blue print diagram, marked Exhibit "C," be taken and received as a part of this bill of complaint.

Fifth. Your orators are advised that the statutes of the State of Mississippi providing for the exercise of the right of Eminent Domain do not authorize or empower any person or corporation of any kind to condemn any land or property of another unless the property sought to be condemned be "private property." The first section of said statutes (Section 1854, Code of 1906) authorizes condemnation proceedings, such as have been instituted by defendant against complainants, only for the purpose of condemning "private property"; another section thereof (Same Code, Section 1865) enacts a form of an instruction to be given the jury empaneled to assess damages, requiring the jury to assess and award the defendant damages, among other things, the value of the property taken; still another section (same Code, Section 1886) prescribes a form of

verdict to be rendered by the jury in Eminent Domain cases, showing that in such cases the jury are required to award damages for the value of the property condemned; still another section (same Code, Section 1867) prescribes the only judgment an Eminent Domain court can render and it is one divesting the defendant of all title to the property condemned and investing the same in the plaintiff or party exercising the right of Eminent Domain. Other sections of said Code relating to Eminent Domain proceedings show [fol. 8] that the statutes of Mississippi on the subject have no application to such a proceeding as the defendant has begun against complainants, since it is incomprehensible that the law designs or will permit one railway company to acquire the exclusive ownership of another railway company's tracks, or any part thereof, and wholly divest the latter company of title and the right to use its right of way, road bed, cross ties, and iron rails constituting the main line of its railroad. If the law can be so construed the railway company so deprived of its railway property could at any time thereafter proceed by Eminent Domain proceedings to re-acquire the property taken from it and the same process could be repeated ad infinitum.

Complainants are advised that the Mississippi statutes relating to Eminent Domain proceedings (Mississippi Code of 1906, Sections 1854 to 1877, inclusive), should they be construed to justify or warrant the prosecution of the Eminent Domain proceedings instituted by the defendant against the complainants, will be and are void because violative of the State Constitution and as well of the Fourteenth Amendment of the Constitution of the United States, and complainants specifically plead the unconstitutionality of such statutes should they be adjudged or construed to warrant the further prosecution of said Eminent Domain proceedings. To construe said statutes as warranting the condemnation of complainant's property sought to be condemned by defendant in and by said Eminent Domain proceedings, as complainants are advised, will be to deny complainant the equal protection of the law and to take complainant's property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

[fol. 9] Sixth. Complainants are aware of the fact that the defendant's charter gives it all the rights and powers conferred by the Mississippi Code of 1906, Section 4096, providing that railroad companies incorporated under the provisions of said Code shall have the right:

"To cross, intersect, join, or unite its railroad with any other railroad heretofore or hereafter constructed at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches, and other conveniences, and to exercise the right of eminent domain for that purpose."

The complainants do not and will not object to the defendant being given all the right it may have under its charter as granted by Mississippi Code of 1906, Section 4096, at a proper and reasonably

safe place for the junction or uniting of the two railroads, but as will be shown hereinafter the point of the junction sought by the defendant in its eminent domain proceedings is an entirely improper and eminently dangerous one for the junction or uniting of two railroads. (Complainants are advised and insist that said Code Section 4096 does not confer authority on defendant to condemn complainant's right of way longitudinally or give defendant the benefit or use of complainant's track or station facilities.)

Complainants are advised that while the defendant may be empowered to exercise the right of Eminent Domain to enforce the rights given it by its charter and the Code section hereinabove quoted, [fol. 10] yet it can not do so for reasons hereinbefore and after stated, by proceedings under the Chapter of the Mississippi Code of 1906 entitled "Eminent Domain," the provisions of that Chapter relating, as they do, alone to the condemnation of "private property," the complainant's property sought to be condemned by defendant's Eminent Domain proceeding, not being "private property," within the law of the State of Mississippi, relating to Eminent Domain, but is property already devoted to public use. The defendant however is not without remedy to enforce whatever right it may have, since a court of equity can give it such remedy as may be necessary to enforce any and all such rights.

Seventh. The complainants are further advised that under the laws of Mississippi the only question to be or that can be litigated in a court of Eminent Domain is "the amount of damages to be awarded defendant. (*Vinegar Bend etc. Co. v. Oak Grove Co.*, 89 Miss. 84, s. e. 43 So. 292) and said court has no jurisdiction to determine the question of the right of the plaintiff to condemn land;" that, therefore, complainants will be unable to defend the above mentioned Eminent Domain proceedings otherwise than by suit in this court, and are without adequate remedy at law.

Eighth. Complainants are further advised that under the Constitution of Mississippi of 1890, Section 184, that:

"All railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the state shall have the right to construct and operate a [fol. 11] railroad between any points within this state, and to connect at the state line with roads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without unnecessary delay or discrimination."

The complainant, Alabama & Vicksburg Railway Company, has from its creation in 1889 carried persons and property for hire and hence is within the terms of the Mississippi Constitution, Section 184, and its road and other property is not private property but is and for many years has been devoted to public use. Complainants

recognize the defendant's rights under Section 184 of the State Constitution, and as hereinbefore stated, will not object to an intersection or connection of the two railroads if made at a proper, suitable and not a dangerous place. The complainant, Alabama & Vicksburg Railway Company, will be ready and willing when a connection or intersection is made of its road with defendant's road to receive and transport the defendant's passengers, tonnage and cars, loaded or empty, without unnecessary delay or discrimination, upon payment by the defendant to the Alabama & Vicksburg Railway Company of just and reasonable compensation for such services as the latter company may render in so doing. The complainant railway company is prohibited by law from rendering such services without just and reasonable compensation and to require it to render such services without such compensation would be, as complainants are advised, [fol. 12] to deny it the equal protection of the law, contrary to the Constitution of the State of Mississippi, and as well contrary to the Fourteenth Amendment to the Constitution of the United States.

Ninth. Complainants are advised, informed and believe, and upon information and belief charge, that the objects and purposes of defendant in beginning its aforesaid Eminent Domain preceeding were not only to effect a junction of its road with the railway of the complainant, Alabama & Vicksburg Railway Company, but defendant designs and purposes to run its trains, locomotives and cars over the main line of the Alabama & Vicksburg Railway built upon a high and costly fill or embankment and over its costly bridge across Pearl River from the point of junction asked to and into the City of Jackson, and to use the station facilities of the Alabama & Vicksburg Railway Company, its side tracks, switches, and other like things in said city for its own purposes, irrespective of the fact that said complainant's station facilities, as is charged to be true, have no greater capacity than is required for its own use and business and are insufficient to carry on said complainant's business and that of another railroad whose business is sufficient to justify its operation. There is ample land and property available to defendant for it to construct and operate its individual and separate railroad and tracks into the City of Jackson, and for defendant to own, construct and operate its own station and terminal facilities, and defendant has no legal or other right, for its convenience or financial advantage, to appropriate complainant's property to itself, and no public necessity or excuse exists for such appropriation. The defendant, as complainants are advised, has no right to run or transport in any way its [fol. 13] trains, locomotives, or cars over the railway tracks of the Alabama & Vicksburg Railway Company, and can acquire said right, if at all, only from and by order of the Interstate Commerce Commission, and if such right can be so acquired, it can be done alone upon due compensation paid by the defendant to the Alabama & Vicksburg Railway Company. Complainants are advised and believe that the Interstate Commerce Commission is without power to authorize defendant to transport its trains, locomotives and cars over the railway of the Alabama & Vicksburg Railway Company, and

that so to do would be to deny said Company its equal protection of the law and take its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States. Be this as it may, the defendant has not been authorized by the Interstate Commerce Commission to make connection with or use the tracks or property of the complainants, or either of them. The defendant has not been authorized by the Interstate Commerce Commission to unite its tracks with that of the Alabama & Vicksburg Railway Company, or to use that part of it between the point it proposes to unite its road with the Alabama & Vicksburg Railway Company's main line of road and the City of Jackson, although the complainants are informed and charge that the defendant has made application to the Interstate Commerce Commission for leave so to do, thereby recognizing the authority of the Interstate Commerce Commission in the premises.

Tenth. The complainant calls the attention of the court to Section 187 of the Constitution of Mississippi of 1890, reading as follows:

[fol. 14] "No railroad hereafter constructed in this State shall pass within three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles; Provided, Such town or its citizens shall grant the right of way through its limits, and sufficient grounds for ordinary depot purposes."

Complainants show that the defendant's railroad was incorporated after the adoption of the Constitution of Mississippi from which Section 187 is above quoted; that the defendant's railroad is laid out, and to a limited extent is constructed, within less than three miles of the City of Jackson. The City of Jackson is the County seat of the first district of Hinds County, Mississippi, and the defendant's proposed road is to connect with the complainant's railway track within less than one mile of the City of Jackson, and the first district of Hinds County, Mississippi, as complainants are advised, is under the laws of this State, for all intents and purposes, a separate county. The defendant does not propose to construct its railway so as to pass into the City of Jackson, nor does it intend to maintain and establish a depot therein, and there are no natural obstacles to prevent it from doing so. Defendant has not applied to the City of Jackson, nor to its citizens, to grant a right of way through the limits of said city, nor has it applied to the City of Jackson, nor to the citizens thereof, for sufficient ground for ordinary depot purposes. Applying the constitutional Section last quoted, and construing it according to the ordinary acceptations and meanings of its terms, defendant is endeavoring to escape its provisions and the Constitution of the State, since it is by said Constitution required to construct its line of railroad into the City of Jackson and therein establish and maintain a depot.

Eleventh. As hereinbefore shown, the point at which the defendant proposes, in and by its Eminent Domain proceeding against these complainants, to make a junction and to unite its railroad with the

railroad of the Alabama & Vicksburg Railway Company, is an improper, unsafe and dangerous place for a point of junction of two railroads. The facts on this subject are as follows:

The line of railway projected and proposed to be built by defendant for many miles, perhaps ten or fifteen practically northward and up Pearl River from the place of the proposed junction is to all intents and purposes parallel to Pearl River itself; but for the meanderings of the river defendant's road will be parallel to said river. Defendant's railway track is to be constructed largely in the valley of Pearl River and for several miles up the river and northward from the proposed place of Junction with complainant's railway it will be constructed so as to prevent, and it will prevent, the overflow waters from Pearl River from spreading out in and over the valley, the natural channel for the escape of overflow waters from said stream. From a mile or two from the proposed place of junction the defendant's railway will, if properly made, be constructed, as complainants believe and charge, upon an embankment which will dam [fol. 16] up and obstruct the overflow waters of Pearl River and largely retard and to a great extent return the same to the channel of the River, thus increasing to a material extent the height of the water in the River itself. For a considerable distance up the River and northward of the proposed place of junction the overflow waters from Pearl River will be dammed up and thrown back towards and into the River, and no matter what openings may be made in the embankment of the defendant's tracks the overflow waters will be concentrated and thrown through narrow passages on to the embankment and track of the Alabama & Vicksburg Railway Company and will greatly endanger the safety of the same. The line of the defendant's railway for a considerable distance up Pearl River and northward of the proposed junction point will necessarily be upon a high embankment. A small portion thereof beginning at the northern edge of the right of way of the Alabama & Vicksburg Railway Company has already been constructed or partially constructed. There are not sufficient openings left in its embankment, as complainants believe, to carry off the overflow water safely, even to the defendant's road, but if the openings in defendant's embankment be sufficient for the safety of its own road its embankment or fills will concentrate the overflow waters which usually spread over the valley, at least two miles in width, and cause them to pass through the unsafe openings in defendant's embankment already mentioned, and will concentrate the overflow waters so as to throw them with great force and violence against the railway tracks of the Alabama & Vicksburg Railway Company and will greatly endanger the embankment of the complainant's railway and its tracks and property. The line of the [fol. 17] defendant's railway as laid out, at a point about one half mile northward from and up Pearl River, is within a very short distance, not over two hundred yards, and perhaps less, of the River itself. From the point last mentioned the defendant's road turns to the west as laid out, practically parallel with Pearl River, and but for the meanderings of the stream would be parallel thereto, and it approaches, as hereinafter shown, the line of the Alabama & Vicksburg Railway Company's track on a sharp curve, the inside or north-

ern rail of which will be lower than its upper or southern rail. Defendant purposes to make its track connect with the line of the Alabama & Vicksburg Railway Company at the point aforementioned where the Alabama & Vicksburg Railway tracks are themselves upon a curve, curving in the opposite direction from that in which the defendant's railway will curve; the proposal being that the junction shall be made at a point where both railway tracks are on a curve, the complainant's railway curving to the left going west and the defendant's railway curving to the right as it approaches the track of the Alabama & Vicksburg Railway Company, because it will be practically impossible, if both roads use the automatic couplers required by an Act of Congress to be used, to couple cars where both roads are on a curve such as hereinbefore shown to be the condition at the proposed place of junction, should the defendant's railroad be permitted to join the railway of the Alabama & Vicksburg Railway Company at that point.

Pearl River is a stream of considerable proportions. It is subject to annual overflows and periodically to extraordinary overflows, so [fol. 18] much so that in the past the line of the Alabama & Vicksburg Railway Company's tracks has been overflowed and completely washed away and put out of use on several occasions. Should the defendant's railway be permitted to make a junction with the line of the Alabama & Vicksburg Railway at the point proposed by it, the overflow water which now spreads over the wide valley of Pearl River will be dammed up between defendant's railway tracks and the River itself. The complainant's railway track is located near the point defendant proposes to join its track to it, not more than one hundred feet distance from the River and the nearest point to the River, except where the Alabama & Vicksburg Railway track crosses the same and there is an outlet under complainant's track through which a large proportion of the river water flows in times of high water. The track of the Alabama & Vicksburg Railway at the point where it is nearest to the River, except where it crosses it, is upon a long trestle about three hundred feet long, and the overflow waters of Pearl River largely pass under this trestle, and the trestle is insufficient to resist any material increase of the overflow waters that now pass thereunder. The complainants apprehend and believe that should the defendant's railway track be constructed to form a junction with the complainant's track at the point proposed by the defendant, that in times of an overflow of the River so much water, additional to the quantity now flowing thereunder, in times of high water will be caused to pass under the trestle aforementioned as to greatly endanger the same and the complainants believe that its trestle and tracks will be destroyed by the excessive amount of water which would have to pass under its trestle should the defendant's road connect with the railway of the complainant at the point proposed by defendant.

[fol. 19] The complainant's railway track at the point where the defendant proposes to connect its railway with it is upon a high embankment or fill, approximately ten feet higher than the surface of the surrounding soil, and if made a place of junction it will necessitate a fill of equal height for all the sidings and interchange

tracks required to be constructed at the place of junction of the railway tracks, thereby incurring a very heavy expense and a continuous large and unnecessary expense for maintaining the same. The existence of the fills required should the junction be made at a point sought by the defendant to have it made, would seriously interfere with the drainage between the tracks and require the solution of difficult and expensive drainage problems. The operation of a railroad on a ten foot fill is always more dangerous than the operation of a railroad on level ground, and the great amount of filling that would be required at the proposed point of junction would increase the obstruction of overflow water from Pearl River at times of overflows and divert the same under the trestle on the track of the Alabama & Vicksburg Railway Company hereinbefore mentioned and the great amount of filling required should the junction be permitted to be made at the place proposed would render such a junction of the two roads unusually dangerous.

The complainants further show that the point of junction is immediately east of a driveway or public crossing, known as Curran's Crossing, which itself, especially because of the curve in the tracks of the Alabama & Vicksburg Railway Company, is a dangerous crossing. Curran's Crossing is subject to heavy highway traffic, and [fol. 20] is used to carry all the traffic in automobiles, wagons, horses, etc., and people on foot, to points East of Pearl River and South of the Alabama & Vicksburg Railway Company's tracks. As before stated this crossing is a dangerous one and has already been the scene of serious accidents, and the place of junction of the two railways immediately at such crossing, or near thereto, will materially increase the amount of train movements over this crossing, thereby materially increasing the danger of accidents at the crossing.

In addition to all this, the proposed junction is near the suburbs of the City of Jackson. If it shall be made at a point proposed by the defendant it will endanger the giving of the block signal system of the Alabama & Vicksburg Railway Company and will cause delay in the movements of its trains.

A connection on a curve, especially where both railroads are on a curve, is particularly objectionable because such a junction is dangerous. The curves in the railway tracks obstruct the view of train crews: an engineer cannot see to advantage, if at all, around a curve, and the chances of accidents will be greatly increased by the fact that both railroads come to the junction, if made where defendant seeks to have it, where both of them will be upon curves. As before stated, if the junction be made at or near Curran's Crossing the lower side of defendant's railway track will be to the North, while the lower side of the Alabama & Vicksburg Railway Company's track will be to the South, and every car upon each track will necessarily be inclined to the lower side of the track upon which it may be standing or running, and the cars on the two tracks will be on opposing planes and cannot be made to approach each other on the [fol. 21] same plane so as to effectuate easy couplings, if couplings can be made between them at all.

And again, the interchanging facilities between the two roads,

if the junction be made at the point sought by the defendant, will necessarily be in an angle between two opposite or diverging curves, which is materially objectionable, and would require the construction, if the junction be made as proposed by defendant, of what is known as a facing point switch on the curve, a thing good railroad requires to be avoided if possible.

The operation of a railroad upon a curved track on a ten foot fill is always more dangerous than its operation on level ground, and at the proposed place of connection this fact considered with the other objections to the place proposed by defendant for a junction would increase the dangers.

Pearl River annually overflows and most generally it overflows two or three times during each year, and it is periodically subject to extraordinary overflows as hereinbefore stated.

When it overflows its waters cover the entire valley, which is from two to five miles in width, and the waters are thrown with great force against the embankment of the Alabama & Vicksburg Railway Company, and will be thrown perhaps with greater force against the line of the defendant's railway. The two railroads, if [fol. 22] the connection is made as proposed by the defendant, will form a V in the valley of Pearl River, the effect of which will be that defendant's track will gather the overflow waters from the River for a considerable area and hurl them through narrow openings, culverts or trestles upon the embankment of the Alabama & Vicksburg Railway Company, certainly it will do this at one or two special points, and thereby materially increase the danger to complainant's property, road bed and railroad track.

The proposed junction contemplates a roadbed for the defendant for approximately one half of a mile near a dangerous bend of Pearl River and the proposed intersection with the complainant's road will be in close juxtaposition to another dangerous bend of said River, within a few yards of the track of the Alabama & Vicksburg Railway Company, and will thereby materially increase the danger to the complainant's railway, and by high water is likely to and will cause interferences of its traffic.

There is no reason why the junction of the two railroads should be at a point proposed by the defendant. The complainant will make no objection to a junction between the two railroads if made far enough away from Pearl River to render the point of junction a safe place for the intersection of two railroads. They do insist however that the law does not require that the junction of two railroads shall be made at a point which is dangerous and which will likely cause the destruction of human life and property, or where the maintenance of the same will inflict great and unnecessary damage and injury upon the line first constructed. The defendant can make the junction with the complainant's road far enough away from Pearl River to greatly diminish and in fact, remove all the [fol. 23] danger herein before mentioned as incident to the proposed junction, and to remove all the dangers occasioned or likely to be occasioned by the overflow waters of Pearl River.

The complainants are advised that the right to condemn property

for public use, the right to condemn property by an Eminent Domain proceeding is founded and based upon public convenience, public interest, public safety, and public welfare, and this being true, it surely must be in proceedings to condemn property by the exercise of the right of Eminent Domain that public interest, public convenience and public safety should be paramount and controlling, and no condemnation should be permitted which will in effect imperil public safety or materially diminish the capacity of public service corporations to perform the duties owed to the public. The facts hereinbefore stated show that if the junction is made between the railroads at the point proposed by defendant even the life of the travelling public and of the employees on both railroads will be endangered. Such danger will extend to complainant Railway's operations in Interstate Commerce which are of great volume and importance and will directly burden and interfere with the same in violation of the Constitution of the United States and the Acts of Congress on the subject of Interstate Commerce.

Twelfth. Your orators further show that they are advised and believe that Section 3, paragraph 14, of the Interstate Commerce Congressional Act as amended by the Congressional Transportation Act, approved February 23, 1920, vested in the Interstate Commerce [fol. 24] Commission, if the acts be valid, the exclusive right to compel connections and the use of terminal facilities and other property by and between railroads engaged in interstate commerce. The defendant, Jackson & Eastern Railway Company, has admitted the controlling force of the Acts of Congress above mentioned. This it has done, as complainants are informed and believe, by itself applying to the Interstate Commerce Commission for the relief, and its application is now a pending one, which it is indirectly seeking to obtain in the aforesaid proceeding, and the Jackson & Eastern Railway Company is therefore in no position to and is estopped from maintaining the Eminent Domain proceeding instituted by it against these complainants, and it has admitted the authority of the Interstate Commerce Commission touching the subject matter of said condemnation proceeding. To allow the defendant to proceed with its condemnation proceeding will be, as complainants are advised, an interference with Federal rights controlled by the Acts of Congress and the Interstate Commerce Commission, because it is true that both plaintiff and defendant in the condemnation proceedings hereinbefore mentioned are engaged in interstate commerce. This is pleaded however on the assumption that the Acts of Congress purporting to confer power on the Interstate Commerce Commission to require and compel a junction between railroads is valid and constitutional. If they be valid and constitutional then the condemnation proceedings sought to be enjoined by this bill of complaint are unlawful and are interferences with interstate commerce in violation of the Constitution and laws of the United States. The point is this however, if authority is vested in any court or tribunal of any kind to condemn the use of the Alabama & Vicksburg Railway tracks, [fol. 25] or any part of its right of way and give another railroad

the right to use the same, that authority exclusively is vested in the Interstate Commerce Commission. The complainants however do not think such power is vested in any court or tribunal because the exercise of such power would be to deprive complainants of their property without due process of law and deny them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States. If complainants be mistaken and such power be invested in the Interstate Commerce Commission, complainants plead the same in bar of the further prosecution of the aforesaid Eminent Domain proceedings.

Thirteenth. The property sought to be condemned by defendant, involving as it does the main line track of complainant Railway Company, and the use of its main line and terminal facilities, is essential to the life and the safe and successful operation of complainant Railway and to the security of the mortgage in favor of complainant Trustees. The maintenance of the condemnation proceeding attempted by defendant threatens the destruction of the property of complainants and the divestiture thereof for defendant's benefit. Very large sums of money aggregating millions of dollars have been invested in such property by complainants and the damage caused by the taking thereof will be great and irreparable.

The premises considered, your orators pray that proper process be issued requiring the defendant to answer this bill of complaint, (not under oath, its oath to the answer being hereby expressly waived), on or before the first day of the next regular term of this court.

[fol. 26] Your orators further pray for the issuance of a preliminary injunction restraining and enjoining the defendant, its agents and attorneys, from further prosecuting in any way the Eminent Domain proceedings instituted by it against the complainants and any and all like proceedings and enjoining the defendant from entering upon or interfering with the right of way and tracks of the Alabama & Vicksburg Railway Company at or near Curran's Crossing, and from running its trains, locomotives and cars upon the tracks of the Alabama & Vicksburg Railway Company so long as the injunction prayed for shall remain in force and effect.

On the final hearing complainants pray that the said injunction shall be made perpetual.

If complainants have prayed for wrong or improper or insufficient relief, they now pray for all such other or further relief as the nature of the case may require, equity and good conscience considered.

And as in duty bound complainants will ever pray.

Alabama & Vicksburg Railway Company, Canal Commercial Trust & Savings Bank, Felix E. Gunter, Complainants.
Bozeman & Cameron, R. H. & J. H. Thompson, S. L. McLaurin, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 27] Sworn to by W. R. Adams; copy omitted in printing.

[fol. 28] EXHIBIT "B" TO THE BILL OF COMPLAINT—Filed March 21, 1922

STATE OF MISSISSIPPI,
Rankin County:

JACKSON & EASTERN RAILWAY COMPANY

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY, CANAL COMMERCIAL Trust & Savings Bank of New Orleans, Trustee; Felix E. Gunter, Trustee, and Unknown Holders of the First-mortgage Bonds of the Alabama & Vicksburg Railway Co. dated April 1, 19—

To the Circuit Clerk of Rankin County, Mississippi:

And now comes the Jackson & Eastern Railway Company, a railroad corporation duly and legally organized under the laws of the State of Mississippi, and makes application for the exercise of Eminent Domain pursuant to Chapter 43 of the Annotated Code of Mississippi of 1906.

1. That your applicant, the Jackson & Eastern Railway Company, was duly organized under the laws of the State of Mississippi as aforesaid, for the purpose of constructing, maintaining and operating a railroad for public use, and for the conveyance of persons and property from Union, Newton County, Mississippi, to Jackson, in the County of Hinds, and State of Mississippi, and through the Counties of Newton, Scott, Leake, Rankin, and Hinds, in the State of Mississippi, and that said applicant's principal place of business is Meridian, Lauderdale County, State of Mississippi.

[fol. 29] That the applicant has been granted by the Interstate Commerce Commission a certificate of public convenience and necessity and authority to construct said railroad as per docket No. 9 of said Interstate Commerce Commission.

2. That in order for this applicant to construct, maintain and operate its said railroad, it is necessary to connect its main line of railroad as now surveyed and definitely located, with the main line of the Alabama & Vicksburg Railway Company, one of the defendants herein, with a switch turnout, at a point on the main line of the Alabama & Vicksburg Railway Company, and in the manner as hereinafter described.

3. That the following real property, rights, privileges and easements are sought to be condemned for the purposes hereinafter stated, to-wit: A strip of land of varying widths extending from station 0-00 on the survey enumeration of the applicant, the Jackson & Eastern Railway Company, which 0-00 station is located on the center line of the Alabama & Vicksburg Railway Company's track 1,797 feet east from the first block signal, east of the Alabama & Vicksburg Railway Company's bridge over Pearl River in an easterly direction along the surveyed line of the Jackson & Eastern

Railway Company, an average distance of 325 feet, the width of said strips to be condemned are: At station 0-00 16 feet, being 8 feet on each side of the center line; at station 0-00 50.21 feet, being 8 feet on the right and 13 feet on the left side of the center line of the [fol. 30] Jackson & Eastern Railway Company's survey; at station 1-50 27 feet wide, being 9 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at station 2-00 30 feet wide, being 11 feet on the right and 19 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at station 2-50 35 feet wide, being 15 feet on the right and 20 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3-33 30 feet wide, being 20 feet on the right and 10 feet on the left of the center line of the Jackson & Eastern Railway Company's Survey; at station 3-25 20 feet wide, being all on the right of the center line of the Jackson & Eastern Railway Company's survey; and at station 3-75 coming to a point on the north right of way line of the Alabama & Vicksburg Railway Company's said survey, containing two hundred and Thirty-two thousandths (2.232) acres, and lies in the N. E. $\frac{1}{4}$ of the X. W. $\frac{1}{4}$, Section 14, Township 5 North, Range 1 East, Rankin County, Mississippi, which said center line of the proposed track of the applicant, the Jackson & Eastern Railway Company, is more fully shown by diagram hereto attached, marked Exhibit "A" and made a part hereof.

The connection which the applicant herein seeks to acquire by condemnation proceedings with the main line of the defendant, the Alabama & Vicksburg Railway Company, is to be a No. 9 turnout and the use of 75# rail, of the same character and design which is now used on the main line of the Alabama & Vicksburg Railway Company at the point of connection. The said connection is to be made as shown by said diagram, Exhibit "A" hereto, and is to be located so that the point on the left hand frog will be 1,867 feet East [fol. 31] of the first block signal semaphore situated on the main line of the Alabama & Vicksburg Railway Company west of Curran's Crossing and east of Pearl River; the said turn-out to operate so that cars may be interchanged between the said Alabama & Vicksburg Railway Company and this applicant, and the said turn-out to be protected by a lock and the main line of the Alabama & Vicksburg Railway Company to be further protected by a derail switch, which is to be placed on the rail of the applicant at a point one hundred feet beyond the point of the frog of the connecting turn-out on the north rail of the applicant's track and the said derail switch to be kept locked, *open* when not in use for the interchange of cars. The alignment of the Jackson & Eastern Railway Company's line adjacent to the main line of the Alabama & Vicksburg Railway Company, as shown by the map or diagram, Exhibit "A" hereto. The crown of the said embankment of the applicant to be not less than 16 feet wide on top, with side slopes of $1\frac{1}{2}$ feet horizontal to one foot vertical. The grade of the finished Jackson & Eastern Railway Company's track will coincide with the grade on the main line

of the Alabama & Vicksburg Railway Company through the turn-out and beyond the switch ties, and continue as an 0.0 grade to station 3-00 and from thence the grade will be a minus 0.3 of 1% for a distance of 1,700 feet.

There will be 1,033.3 cubic yards of earth fill in the Alabama & Vicksburg Railway Company's fill which will come within the theoretical section of the proposed fill of the applicant and there will be 85.2 cubic yards of slag ballast now under the Alabama & Vicksburg Railway track which will come within the ballast section of the applicant's proposed connection. Ballast of stone, gravel or slag will be placed 1½ feet deep below the top of the cross ties of the Jackson & Eastern Railway Company's tracks throughout that portion where drainage of the Alabama & Vicksburg Railway Company's track shall be effected by earth ballast, namely from station 0-00 to station 2-40 on the Jackson & Eastern Railway Company's survey enumeration. The switch ties to be used in the turn-out will be of White or Post Oak, of first class grade and 7" x 9" cross section. The installation to be made under competent supervision, and in workmanlike manner, in accordance with the standard practice of the A. & V. Railway Company.

The applicant further shows that the lands easements, rights and privileges above described are owned by the defendant, the Alabama & Vicksburg Railway Company, a corporation organized under the laws of the State of Mississippi, and owning and operating a line of railroad, as a common carrier, from Meridian, Mississippi, to Vicksburg, Mississippi, which line of railroad extends through Rankin County, Mississippi.

Applicant further shows that the defendant, the Canal Commercial Trust & Savings Bank, is a corporation organized under the laws of the State of Louisiana, and that its post office address is New Orleans, Louisiana; and that the defendant, Felix E. Gunter, is a nonresident of the State of Mississippi, and that he is a resident of the State of Louisiana, c/o Canal Commercial Trust & Savings Bank; that the said Canal Commercial Trust & Savings Bank and [fol. 33] Felix E. Gunter are named as Trustees in that certain mortgage or deed of trust executed by said defendant, the Alabama & Vicksburg Railway Company, on March 23, 1921, to secure the first mortgage bonds issued by the said Alabama & Vicksburg Railway Company on April 1, 1921, for \$4,000,000.00, which said deed of trust or mortgage conveys to said trustees, to secure said bonds, the property, rights, privileges, and easements herein sought to be condemned.

This applicant further states and shows that the said First Mortgage Bonds issued by the defendant, the Alabama & Vicksburg Railway Company, dated April 1, 1921, are now owned by various corporations, whose names and post office addresses are unknown to this applicant.

4. Your applicant would further show that the public use for which the strip of land, rights, privileges and easements hereinabove described is for a right of way for a switch track and the con-

nection of said switch with the main line of the defendant, the Alabama & Vicksburg Railway Company, at the point above described; and your applicant further shows that it is necessary for it to own, occupy and use said strip of land, rights, privileges, and easements, above described, in order properly to conduct its business as a common carrier, for which purpose it was organized.

5. That your applicant has been and still is unable to agree with the defendant herein as to the compensation to be paid them, and that the defendant, the Alabama & Vicksburg Railway Company, has refused and declined to permit this applicant to connect with its main line in the manner as herein described, and that your applicant [fol 34] has not been able to obtain from the defendants the right, privileges and easements herein sought to be condemned.

6. Your applicant further shows that it is its intention in good faith to make the connection with the main line of the said Alabama & Vicksburg Railway Company in the manner and the point herein described.

Wherefore, your applicant prays that such steps be taken for the condemnation of said lands, rights, privileges, and easements, for the purpose aforesaid, as are required by Chapter 43 and Section 4096, of the Annotated Code of Mississippi of 1906.

And as in duty bound your applicant will ever pray.

Jackson & Eastern Railway Company, Applicant. Neville & Stone, Attorneys.

[File endorsement omitted.]

[fol. 35] Exhibit C blue print.

[fol. 36] IN CHANCERY COURT OF LAUDERDALE COUNTY

ORDER FOR INJUNCTION—Filed March 21, 1922

Upon the filing of the above and foregoing bill of complaint and the execution by the complainants therein of a good and sufficient injunction bond, payable to the defendant, in the penalty of Fifteen Hundred Dollars (\$1,500.00), with sufficient surety or sureties, to be approved by you and filed in the case, the bond to be conditioned as required by law, you will issue an injunction as prayed for in the bill of complaint to be served on defendants, Jackson & Eastern Railway Company.

Ordered at Jackson, Mississippi, this March 18, 1922.

Sydney Smith, Chief Justice of the Supreme Court of Mississippi.

[File endorsement omitted.]

[fols. 37 & 38] BOND ON INJUNCTION FOR \$1,500—Approved and filed March 21, 1922; omitted in printing

[fol. 39] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

DEMURRER TO BILL OF COMPLAINT—Filed March 30, 1922

And now comes the defendant, the Jackson & Eastern Railway Company, and demurs to the Bill of Complaint filed against it in the above styled cause, and for grounds of demurrer states and shows as follows, to-wit:

1. The facts contained in said bill do not entitle the complainants to the relief prayed for.
2. The facts contained in said bill do not entitle the complainants to any relief.
3. There is no equity in said bill.

And for other grounds to be stated orally on the hearing hereof.
Neville & Stone, Solicitors for Defendant.

I, George B. Neville, one of the defendants for the defendant, do hereby certify that in my opinion the above demurrer should be sustained.

George B. Neville.

[File endorsement omitted.]

[fol. 40] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

MOTION TO DISSOLVE INJUNCTION—Filed March 30, 1922

And now comes the Jackson & Eastern Railway Company, the defendant in the above styled cause, and moves the Court to dissolve the injunction heretofore granted in said cause, and for grounds of motion states and shows as follows, to-wit:

1. That the facts set up in said bill do not entitle the complainants to an injunction.
2. Because said injunction was improvidently granted.
3. Because there is no equity in complainant's bill.

And for other grounds to be stated orally on the hearing hereof.

This movant further prays that it be allowed damages upon the dissolution of said injunction, as shown by the statement of damages hereto attached and made a part of this motion.

Neville & Stone, Solicitors for Defendant, The Jackson & Eastern Railway Co.

[File endorsement omitted.]

Vol. 41] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

On Motion to Dissolve Injunction

SUGGESTION OF DAMAGES—Filed March 30, 1922

to solicitors' fee.....	\$10,000.00
to cost of new eminent-domain proceedings made necessary by injunction	150.00
one month's salary to engineer and expenses made necessary by said injunction.....	250.00
Total damages	\$10,400.00

Neville & Stone, Solicitors for Jackson & Eastern Railway Company.

[File endorsement omitted.]

Vol. 42] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

NOTICE OF HEARING ON MOTION TO DISSOLVE INJUNCTION—Filed March 30, 1922

to the Alabama & Vicksburg Railway Company and Canal Commercial Trust & Savings Bank of New Orleans, La., and Felix E. Gunter, trustee, and Unknown Holders of the First Mortgage Bonds of the Alabama & Vicksburg Railway Company dated April 1, 1921, or Messrs. Bozeman & Cameron or Messrs. R. H. & J. H. Thompson, solicitors of record for the complainants:

You are hereby notified that the Jackson & Eastern Railway Company, the defendant in the above styled cause, has filed a motion to dissolve the injunction heretofore granted against it in said cause, and that said motion will be heard before the Hon. George C. Tann, Chancellor, in the office of the Chancery Clerk of Lauderdale County,

Mississippi, at 2:00 P. M., on Tuesday, April 4, 1922. Said motion will be submitted on bill and demurrer.

Neville & Stone, Solicitors for Jackson & Eastern Railway Company.

We, Bozeman & Cameron, Solicitors for Complainants in the above styled cause, do hereby accept service of copy of the above notice, and copy of motion to dissolve said injunction, and statement of damages, and copy of defendant's demurrer to the bill filed in said cause; and do hereby waive the service of same by the Sheriff.

This the 30th day of March, 1922.

Bozeman & Cameron, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 43] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

INJUNCTION WRIT AND SUBPENA—Filed March 21, 1922

The State of Mississippi to the Jackson & Eastern Railway Company, its agents and attorneys:

You are hereby notified that the Alabama & Vicksburg Railway Company, the Canal Commercial Trust & Savings Bank of New Orleans, and Felix E. Gunter, as complainants, have filed their bill of complaint in the Chancery Court of Lauderdale County, Mississippi, against you as defendant to said bill of complaint, and the case is styled in said court as written in the caption hereof, and that the complainants have obtained from the Hon. Sydney Smith, Judge of the Supreme Court of said State, a fiat authorizing the issuance of an injunction restraining and enjoining you as hereinafter shown: that complainants have executed the injunction bond required by the terms of said fiat and the said bond has been approved and is on file on said suit in said court.

Wherefore you, your agents and attorneys are enjoined and restrained from further prosecuting in any way the Eminent Domain [fol. 44] proceeding heretofore instituted by you in Rankin County, Mississippi, wherein said complainants are defendants, fully described in said bill of complaint, and you are further enjoined and restrained from instituting any other like proceedings against the said complainants, and you are further enjoined and restrained from entering upon or interfering with the right of way and tracks of the Alabama & Vicksburg Railway Company, at or near Currans' Crossing, and you are further enjoined and restrained from running your trains, locomotives, and cars upon the tracks of the Alabama & Vicksburg Railway Company, so long as said injunction shall remain in force or effect you must fully obey this injunction under penalty for failure to do so.

You are further warned and commanded to be and appear in the Chancery Court of Lauderdale County, Mississippi, on the first day of a term of said court to be held in the court house of said county, in the City of Meridian, Mississippi, beginning on the Second Monday, the 8th day of May, 1922, *there* and there to answer said bill of complaint or otherwise defend said suit. Therein fail not.

In witness whereof, I, the undersigned, the Clerk of the Chancery Court of Lauderdale County, Mississippi, subscribe my name and affix my official seal hereto, at my office in the County Court House at Meridian, Mississippi, this the 21st day of March, 1922.

Geo. F. Hand, Clerk of the Chancery Court of Lauderdale County, Mississippi. (Seal.)

The State of Mississippi to the Sheriff of Lauderdale County, Mississippi:

You will serve the above and foregoing injunction writ and sub-fol. 45] pena upon the Jackson & Eastern Railway Company, and make due return in writing thereon, showing how you shall have executed the same.

Done this March 21, 1922, as witness my hand and official seal.

Geo. F. Hand, Clerk of the Chancery Court of Lauderdale County, Mississippi. (Seal.)

(Service)

Executed the within writ personally by delivering to S. A. Neville, President of the Jackson & Eastern Railroad Company, a true copy of this writ.

This the 21st day of March, 1922.

John M. Nartin, Sheriff.

[File endorsement omitted.]

fol. 46] IN CHANCERY COURT OF LAUDERDALE COUNTY

SUMMONS AND SHERIFF'S RETURN—Filed March 21, 1922

The State of Mississippi to the Sheriff of Lauderdale County, in said State:

You are hereby commanded to summon Jackson & Eastern Railway Company, if to be found in your County, to appear before the Chancery Court of the County of Lauderdale, in the State of Mississippi, at a term of said court to be held on the second Monday of May A. D. 1922, at the courthouse in the City of Meridian, Mississippi, then and there to plead, answer or demur to the Bill of the Alabama & Vicksburg Railway Company, to which they are defendant, and have there then this writ.

Given under my hand and the seal of said Court, and issued this the 21st day of March A. D., 1922.

George F. Hand, Clerk of the Chancery Court of Lauderdale County, Mississippi, by S. M. Guy, Deputy Clerk. (Seal.)

(Return)

Executed the within writ personally by delivering to S. A. Neville, President of the Jackson & Eastern Railroad Company, a true copy of this writ.

This the 21 day of March, 1922.

John M. Martin, Sheriff.

[File endorsement omitted.]

[fol. 47] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER DISSOLVING INJUNCTION AND GRANTING APPEAL—Filed
April 27, 1922

This cause coming on to be heard, in vacation, at Meridian, Lauderdale County, Mississippi, pursuant to notice and agreement of all parties, on the motion of the defendant to dissolve the injunction heretofore granted in said cause, on bill and demurrer thereto, and on suggestion of damages, and after argument of counsel, it is the judgment of the undersigned that said injunction was improvidently issued, and should be dissolved.

It is therefore hereby ordered, adjudged and decreed that said injunction be, and the same is hereby dissolved.

Thereupon, the complainants made application for an appeal to the Supreme Court to settle the principles of the cause with a supersedeas, and after due consideration it is ordered that the complainants be, and they are hereby, granted the right to appeal to the Supreme Court to settle the principles of this cause on giving bond in the penalty of \$500, but it is further ordered that said appeal shall not operate as a supersedeas.

Upon agreement between the complainants and the defendant the question of damages claimed by the defendant is continued until the May 1922 term of this court.

[fol. 48] The Clerk of the Chancery Court of Lauderdale County, Mississippi, is ordered to enter this decree on his vacation minutes.

Ordered, adjudged and decreed, this the 22 day of April, 1922.

G. C. Tann, Chancellor.

[File endorsement omitted.]

[fols. 49 & 50] BOND ON APPEAL FOR \$500—Approved and filed April 28, 1922; omitted in printing

[fol. 51] CITATION—In usual form, showing service on S. A. Neville; filed May 1, 1922; omitted in printing

[fol. 52] IN SUPREME COURT OF MISSISSIPPI

#—

ALABAMA & VICKSBURG RAILWAY Co., Appellant,

vs.

JACKSON & EASTERN RAILWAY Co., Appellee

PETITION FOR A WRIT OF SUPERSEDEAS—Filed May 1, 1922

To the Honorable Sydney Smith, Chief Justice of the Supreme Court of Mississippi:

Comes the appellant and respectfully shows that this case is pending in this court on appeal to settle the principles of the cause from a decree of the Chancellor in Vacation dissolving the injunction; the injunction having been dissolved upon the ground that on the face of the bill the injunction was improvidently issued; as will more fully appear by reference to the record in the cause.

2. Upon dissolution of said injunction the appellant, being the complainant below, made application forthwith to the Chancellor for an appeal to the Supreme Court to settle the principles of the cause with a supersedeas.

The Chancellor granted the appeal to this Honorable Court to settle the principles of the case but refused to grant a supersedeas and ordered that said appeal should not operate as a supersedeas; as more fully appears by the decree from which this appeal is prosecuted.

3. Notwithstanding the appeal to this Court to settle the principles of said cause, the defendant Jackson & Eastern Railway Company is now proceeding with the prosecution of the Eminent Domain proceedings against the complainant for the purpose of entering upon the right-of-way and tracks of appellant, and is now proceeding to do the things which by said injunction it was enjoined and restrained from doing.

[fol. 53] 4. And unless the appellant shall be granted a supersedeas, the appellee will complete said Eminent Domain proceedings against appellant and will enter upon and take possession of the right of

way and tracks of appellant, as alleged in the bill, and will inflict upon appellant the irreparable damage and injury alleged in the bill, before the appeal in this case can be heard and determined in due course by this Honorable Court.

5. Upon the face of the bill, and for the reasons alleged in the bill for the granting of an injunction, the appellant is entitled to have the appeal in this case operated as a supersedeas.

6. Wherefore, the appellant makes this application and prays that your Honor may allow a supersedeas from the decree dissolving the injunction, appealed from in this case and may order the issuance of a writ of supersedeas herein, upon the execution of such bond or security as may be proper.

Respectfully submitted, R. H. & J. H. Thompson, S. L. McLaurin, Bozeman & Cameron, Attys. for Appellant.

I hereby acknowledge that I have this day received a copy of the foregoing application for a supersedeas, and accept notice that said application will be presented at Jackson, Miss., on May 6th, 1922 at 10 o'clock A. M. This the 29th day of April, 1922.

Neville & Stone, Attys. for Appellee.

[File endorsement omitted.]

[fol. 54]

IN SUPREME COURT OF MISSISSIPPI

PRÆCIPUE FOR SUMMONS—Filed May 6, 1922

Office of Neville & Stone

Meridian, Miss., April 22, 1922.

Circuit Clerk, Brandon, Miss.

DEAR SIR: The Chancellor has dissolved the injunction in the case of A. & V. Ry. Co. vs. The Jackson & Eastern Ry. Co. so we desire to give now notice of hearing of the condemnation proceedings in the matter of the Jackson & Eastern Ry. Co. v. The A. & V. Ry. Co. to the Canal Commercial Trust & Savings Bank, Trustee, and Felix E. Gunter, Trustee, on the application which we filed with you in February.

We are herewith enclosing summons to be issued by you to be delivered to the sheriff, to be served on the Agent of the A. & V. Ry. Co. at Brandon. A copy of this summons will have to be posted on the A. & V. Ry. at the point sought to be condemned.

We are also herewith enclosing notice for publication, and the copies thereof.

A new jury will have to be drawn, but we suggest that you do not draw the jury until about May 10th. You will please have the notice for publication inserted in the next issue of your county paper, and have it published therein for three consecutive weeks.

The sheriff will have to serve one copy of the summons on the Agent of the A. & V. Ry. Co. at Brandon, and also post one copy thereof in a conspicuous place on the property sought to be condemned. If the Sheriff does not know where the place is located, tell him to let us know and we will send a representative there to go with him when he posts it.

Under Sec. 3921 of the Code it is your duty to mail a copy of the published notice to the Canal Commercial Trust & Savings Bank [fol. 55] of New Orleans, La., trustee, and also a copy thereof to Felix E. Gunter, Trustee, care the Canal Commercial Trust & Savings Bank, of New Orleans, La.

All of these papers will have to be issued on the application which we sent you in February. We have written on the original summons the returns to be made by the sheriff.

If there is any further information you may desire in regard to this matter please let us know.

Thanking you, we are,

Yours very truly, Neville & Stone.

P. S.—The Sheriff will also have to serve a copy of the summons on Jno. Neely, the Justice of the Peace. H. & S.

IN SUPREME COURT OF MISSISSIPPI

SUMMONS AND SHERIFF'S RETURN—Filed April 26, 1922

STATE OF MISSISSIPPI,

Rankin County:

To the Sheriff of said County, Greeting:

This is to command you to summon the Alabama & Vicksburg Railway Company, a corporation, the Canal Commercial Trust & Savings Bank of New Orleans, La., trustee, Felix E. Gunter, trustee, and the unknown holders of the First Mortgage Bonds of the Alabama & Vicksburg Railway Company, dated April 1, 1921, defendants, if to be found in your county, and John Neely, Justice of the Peace of said county, to be and appear at 10:00 o'clock A. M., on Friday, the 19th day of May, 1922, at Curran's Crossing, on the Alabama & Vicksburg Railway Company's main line east of its bridge across Pearl River, in said county, the defendants to protect their rights as against the Jackson & Eastern Railway Company, applicant, who prays the condemnation of certain property, rights, easements and privileges described in its application now on file in my office, in which said defendants are alleged to be interested, and said Justice of the Peace to preside over a special court of eminent [fol. 56] domain then and there to be organized for this purpose, and to have then and there this writ, to be filed with said Justice of the Peace, with your endorsement thereon.

Witness my hand and seal of the Circuit Court of said County,
this the 24th day of April, 1922.

D. P. Gayden, Clerk of the Circuit Court of Rankin County,
Mississippi.

SHERIFF'S RETURN

No. 375

J. & E. Ry. Co.

vs.

A. & V. Ry. Co. et als.

Original Summons

I have this day executed the within writ personally, by delivering to J. D. McWhorter, agent of the Alabama & Vicksburg Railway Co., and to John Neely, Justice of the Peace, each a true copy hereof. The Canal Commercial Trust & Savings Bank and Felix E. Gunter, not to be found in my County.

G. A. Harrison, Sheriff.

This 25th day of April, 1922.

Sheriff's Return

I have this day further executed this writ personally by posting a true copy thereof at a conspicuous place on the property sought to be condemned.

This the 25th day of April, 1922.

G. A. Harrison, Sheriff.

[File endorsement omitted.]

[fol. 57] STATE OF MISSISSIPPI,
Rankin County:

I, the undersigned Clerk of the Circuit Court in and for said County and State, hereby certify that the annexed and foregoing pages present a full, true and correct copy of a letter written to me by Neville & Stone and also of a writ issued by me in pursuance of said letter and also the Sheriff's return made on said writ as the same now appear of record in my office.

Witness my hand and official seal, this 4th day of May, 1922.

D. P. Gayden, Circuit Clerk.

[File endorsement omitted.]

[fol. 58]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER GRANTING SUPERSEDEAS—June 5, 1922

This cause coming on to be heard on the motion of appellant for supersedeas and this court having sufficiently examined and considered the same, doth order and adjudge that the same is hereby granted upon appellant entering into bond in the penal sum of Five Thousand Dollars with sufficient surety to be approved by the Clerk of the Chancery Court of Lauderdale County, Mississippi payable and conditioned according to law.

[fol. 59]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERROR

The appellant, the Alabama & Vicksburg Railway Company, shows to the court that there is error apparent of record to its prejudice in this cause. Wherefore, it has appealed to this court and for cause of reversal of the unjust, wrongful and erroneous decree rendered against it by the Chancery Court of Lauderdale County, it assigns the following, to-wit:

First. The court below erred in sustaining the motion of the appellee, defendant in the court below, to dissolve the preliminary injunction which had been issued in the case.

Second. Divers other errors to be made known on the hearing.

The appellant respectfully prays a reversal of the decree appealed from and the rendition of such decree by this court as shall do justice to this appellant.

And, as in duty bound appellant will ever pray.

S. C. McLaurin, Bozeman & Cameron, and R. H. & J. H. Thompson, Solicitors for Appellant.

A copy of the above and foregoing assignment of error has this day been forwarded by mail, postage prepaid, to Messrs. Neville & Stone, solicitors for appellee, Jackson & Eastern Railway Company, addressed to them at Meridian, Mississippi, their place of residence and usual post office address. Done this June 6, 1922.

R. H. Thompson, of Counsel for Appellant.

[fol. 60]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ARGUMENT AND SUBMISSION—October 30, 1922

Argued orally by R. H. Thompson and A. S. Bozeman for Appellant and Geo. B. Neville for appellee and submitted on briefs by Fulton and R. H. & J. H. Thompson and A. S. Bozeman for Appellant and Neville & Stone for appellee.

[fol. 61]

IN SUPREME COURT OF MISSISSIPPI

FINAL DECREE—April 2, 1923

This cause having been submitted at a former term of this court on the record herein from the Chancery Court of Lauderdale County and this court having sufficiently examined and considered the same and being of opinion that there is error therein, doth order, adjudge and decree that the decree of said chancery court rendered in this cause on the 22nd day of April, 1922, be and the same is hereby reversed, the demurrer overruled and this cause remanded with leave to answer the bill within thirty days or such additional time as the Chancellor may allow and that appellee do pay the costs of this appeal to be taxed, etc.

You are therefore hereby commanded, that such execution and further proceedings be had in said cause, as according to right and justice, the judgment of our Supreme Court and the law of the land ought to be had.

Witness, the Hon. Sydney Smith, Chief Justice of our Supreme Court; also the signature of the Clerk and the seal of said Court, hereunto affixed, at office, at Jackson, this the 26th day of May A. D. 1923.

W. J. Buck, Clerk.

[fol. 62]

IN SUPREME COURT OF MISSISSIPPI

Division B

[Title omitted]

OPINION

ETHRIDGE, J.:

On the 25th of February, 1922, the Jackson & Eastern Railway Company, a railroad corporation incorporated under the laws of the State of Mississippi subsequent to the enactment of the Code of 1906, filed its application with the circuit clerk of Rankin County to con-

demn a connection with the Alabama & Vicksburg Railway Company, also a Mississippi Corporation, setting out in detail the description of the property of the defendant which it desired to condemn in making the connection. The petition after describing the property sought to be condemned, stated:

"The connection which the applicant herein seeks to acquire by condemnation proceedings with the main line of the defendant, the Alabama & Vicksburg Railway Company, is to be a 9 turn-out and the use of 75# rail, of the same character and design which is now used on the main line of the Alabama & Vicksburg Railway Company at the point of connection," etc.

The appellant thereupon filed the bill for injunction seeking to re-[fol. 63] strain the Jackson & Eastern Railway Company from exercising the right of eminent domain and alleged in its bill that the Alabama & Vicksburg Railway Company is a corporation under the laws of the State of Mississippi, its railway line extending from Vicksburg, Mississippi, to Meridian, Mississippi, and passes through the Counties of Warren, Hinds, Rankin, Scott and Newton, and that part of Lauderdale County between the Newton County line and the City of Meridian. That complainant had been in the adverse possession of its railway from 1889 until the present time, and is now in such possession and control. It further set up that the Canal Commercial Trust and Savings Bank and Felix E. Gunter are the Trustees in a mortgage executed March 23, 1921, and are interested in the suit because of their trusteeship. That the Jackson & Eastern Railway Company is a Mississippi corporation, domiciled at Meridian, Lauderdale County, Mississippi, and is given only the powers and privileges specified and enumerated in the Chapter on Railroads, Sections 4080 to 4099, inclusive, Code of 1906. That the said defendant had instituted eminent domain proceedings under the Code of 1906, Sections 1854 to 1877, inclusive, to condemn and take from the complainant a part of said complainant's right-of-way and road bed, including a part of its main line of railway, its cross-ties and iron rails, and to divest complainant Company of a part, and a necessary part, of its road bed, right-of-way, cross-ties, and iron rails.

It further alleged that complainant is advised that the statutes of [fol. 64] the State of Mississippi providing for the exercise of the right of eminent domain do not authorize or empower any person or corporation of any kind to condemn any land or property unless such property sought to be condemned be private property. The statutes under the Chapter on Eminent Domain enacts an instruction to be given the jury in assessing damages and in another section prescribes the form of verdict and that the only judgment the eminent domain court can render is one divesting the defendant of all title to the property condemned, and investing the same in the plaintiff or party exercising the right of eminent domain. That other sections of said chapter show that the statutes of Mississippi on the subject have no application to such a proceeding as the defendant has begun against the complainant, and that it is incomprehensible that the law de-

signs or permits one railway company to acquire the exclusive ownership of another railway company's tracks, or any part thereof.

That if the Code of 1906, Sections 1854 to 1877, inclusive, should be construed to justify or warrant eminent domain proceedings by the defendant against the complainant will be null and void because violative of the State Constitution as well as the Fourteenth Amendment to the Constitution of the United States, and that said statutes so construed will be unconstitutional and will deny the complainant equal protection of the law and take property without due process of law; that the complainant is aware that under Section 4096, Code of 1906, a defendant is given the right to cross, intersect, join or unite its railroad with any other railroad at any points on their roads, and [fol. 65] upon the grounds of such other railroad company, with the necessary and proper turn-outs, sidings, switches and other conveniences, and to exercise the right of eminent domain for that purpose. That complainant does not object to the defendant being given all the right it may have under its charter as granted by Section 4096, Code of 1906, at a proper and reasonably safe place for the junction or uniting of the two railroads; but that the point of junction sought by the defendant in its said proceedings is entirely improper and eminently dangerous, and that the said section does not confer authority to condemn complainant's right of way longitudinally, or give the defendant the benefit or use of complainant's track or station facilities.

That the defendant cannot exercise powers of eminent domain under the provisions of the Chapter entitled Eminent Domain because such chapter was limited to the condemning of private property and the complainant's railroad is not private property but property devoted to the public use.

It is further alleged that under the law of this State the complainant cannot contest in the eminent domain court any other question than the amount of damages to be awarded and that such court has no jurisdiction to determine the propriety or rightfulness and legality of the junction at the point where it is sought by the defendant.

It is further averred that under Section 184, Constitution of 1890, the complainant's road is a public highway and that said complainant [fol. 66] has since 1889 carried persons and property for hire and hence its road and other property is not private property but is and has been for many years devoted to the public use. That it will not object to intersection or connection of its railroad with that of the defendant at a proper and suitable and not a dangerous place and will be willing when the connection is made to receive and transport defendant's passengers, tonnage and cars, loaded or empty, without unnecessary delay or discrimination, upon payment by the defendant of just and reasonable compensation.

It is further charged that upon information and belief that the objects and purposes of the defendant in beginning the said eminent domain proceedings were not only to effect a junction of its road with the complainant's road, but designs and purposes to run its trains, locomotives and cars over the main line of the complainant

built upon a high and costly fill or embankment and over its costly bridge across Pearl River from the junction point to the City of Jackson, and to use its station facilities, side tracks, switches, and other like things in said city for its own purposes, although complainant's facilities have no greater capacity than is required for its own use and business, and is insufficient to justify or accommodate the business of the defendant, and that the defendant has no right to condemn its said property for such purposes.

It further alleged that defendant has not been authorized by the Interstate Commerce Commission to make connection or use the tracks or property of the complainant, although the complainant is informed and charges that defendant has made application to the Interstate Commerce Commission for leave to do so.

[fol. 67] It is further alleged that Section 187 of the Constitution of 1890, requires every railroad which passes within three miles of a county seat to pass through the same and to establish and maintain a depot therein unless prevented by natural objects, etc. and that defendant's railroad will be within less than three miles of the City of Jackson, at the point of junction, and that the City of Jackson, is the county seat of the First District of Hinds County, and that there are no natural obstacles to prevent it from going into the City of Jackson on its own tracks, and that the defendant has not applied to the City of Jackson, nor to the citizens thereof, for sufficient grounds for ordinary depot purposes, and that defendant is seeking to escape the provisions of the said section of the Constitution by seeking the condemnation sought to be enjoined.

It further alleged that the place where the condemnation is sought to be made is improper, unsafe and dangerous for a point of junction of two railroads. That the line of the defendant as projected for many miles practically north up Pearl River from the place of junction, is to all intents and purposes parallel to Pearl River itself, and that said railroad is to be constructed largely in the valley of Pearl River and is to be constructed so as to prevent and will prevent the overflow waters from Pearl River from spreading out over the valley, the natural channel for the escape of overflow waters from the said stream. That for a mile or two from the proposed place of [fol. 68] junction the defendant's railway will be constructed upon an embankment which will dam up and obstruct the overflow water of Pearl River and to a large extent return the same to the channel of Pearl River, thus increasing to a material extent the height of the water in the River itself. That for a considerable distance up Pearl River and north of the proposed place of junction the overflow waters from Pearl River will be dammed up and thrown back into the River, and no matter what openings may be made in the defendant's tracks, the overflow water will be concentrated and thrown through narrow passages on the embankment and track of the complainant's road and will greatly endanger the safety of the same.

That the defendant's line of railroad for a considerable distance up Pearl River will necessarily be upon a high embankment, a small portion thereof, beginning at the edge of the right of way of the Alabama & Vicksburg Railway Company has already been con-

structed, or partially constructed. That there are not sufficient openings left in its embankment to carry off the overflow water safely, even to the defendant's road, but even if sufficient for that purpose the result will be a concentration of the overflow waters so as to throw them with great force and violence against the railway tracks of the Alabama & Vicksburg Railway Company, and will greatly endanger the embankment of the complainant's railway, and its tracks and property. That the line of the defendant's railway as laid out at a point about one-half mile northward from and up Pearl River, is within a short distance,—not over two hundred yards of Pearl River. That from said point defendant's road turns to the west as laid out, [fol. 69] practically parallel with Pearl River, and approaches the lines of the Alabama & Vicksburg Railway Company's track on a sharp curve, the inside or northern rail of which will be lower than its upper or southern rail. That the point where the defendant purposes to make its track connection with the complainant's track is upon curves on both roads, the complainant's right curving to the left going west and the defendant's curving to the right as it approaches the track of the complainant's road, thus rendering it an improper place for the junction of two roads, because it will be practically impossible, if both roads use the automatic couplers required by an Act of Congress to be used, to couple cars where both roads are on a curve.

That Pearl River is a stream of considerable proportions, subject to annual overflows and periodically to extraordinary overflows, so much so that in the past the complainant's track has been overflowed, washed away, and put out of use on several occasions. That should the defendant's railway be permitted to make a junction with the railway of the Alabama & Vicksburg Railway Company at the point proposed, the overflow waters which now spread over the valley of Pearl River will be dammed up between the defendant's tracks and the River. That complainant's track located near the point where the defendant proposed to intersect it is not more than one hundred feet from the River at the nearest point, and that there is an outlet under complainant's track through which a large proportion of the [fol. 70] River water flows in time of high water. That complainant's track at this point is upon a long trestle, about three hundred feet long, and the overflow waters of Pearl River largely pass under this trestle, and the trestle is insufficient to resist any material increase of the overflow water that now pass thereunder. It further alleges that it believes the defendant's railway track if it be constructed as designed to form a junction at the point proposed by the defendant, that in times of overflow so much additional water will flow thereunder as to greatly endanger the said trestle and track, and that they will be destroyed by such excessive amounts of water.

That complainant's track at this point is about ten feet higher than the surrounding soil and — the defendant's junction is made there, it will necessitate a fill of equal height for all the sidings and interchange tracks required to be constructed at the place of junction. That this will involve extensive drainage problems and seriously interfere with the drainage of the tracks. That it is always dangerous

re a junction on elevated embankments; and that such junction immediately east of the public drive of public road crossing known as "Murray's Crossing" which itself because of the curve in the tracks of the Alabama & Vicksburg Railway Company is a dangerous crossing, that such crossing is subject to a heavy highway traffic and is to carry all of the traffic in automobiles, wagons, horses and men on foot to points east of Pearl River and south of the Alabama & Vicksburg Railway Company's tracks, and has been the scene of many serious accidents, and that the junction of the two railroads near such crossings will materially increase the amount of train accidents over this crossing, thereby increasing the danger of accidents at the crossing.

It is in addition the proposed junction is near the suburbs of the city of Jackson and will endanger the giving of the block signal of the Alabama & Vicksburg Railway Company and will cause delay in the movements of its trains.

It is the curve on the said two railroads will obstruct the view of train crews and that the engineers in charge of the trains could not go to advantage, if at all, around the curve, and chances of accidents will be greatly increased by the fact that both railroads come to a junction if it is made upon curves.

It is further alleged that the Interstate Commerce Commission has no jurisdiction over the establishment of junctions between railroads engaged in interstate commerce, and that both railroads are engaged, and that the Federal law displaces the State law if the Federal Act be valid.

The bill was demurred to, the demurrer sustained, and the bill dismissed, from which this appeal is prosecuted.

2] The first question we will consider is whether the junction can be made under the proceedings instituted by the appellee in the eminent domain court.

Under Section 184, of the State Constitution of 1890,

"Every railroad company shall have the right with its road to connect, connect with, or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without unnecessary delay or dissipation."

Under Section 190, Constitution of 1890, it is provided:

"The exercise of the right of eminent domain shall never be restricted, or so construed as to prevent the legislature from taking private property and franchises of incorporated companies, and subjecting them to public use;" etc.

In the Chapter on Railroads, Code of 1903, Section 4093, Henry's Code, Section 6722, it is said:

"To enter upon all lands and to survey, lay out, and construct a road thereon; but before so doing, it must contract and agree

with the owner upon the price to be paid for the land or its use, or with the administrator executor, or guardian in case the owner be [fol. 73] dead, be an infant, or person of unsound mind; or it must condemn and acquire the same, if an agreement cannot be made, by the exercise of the right of eminent domain as provided in the chapter on that subject."

Section 4096, Code of 1906 Hemingway's Code, Section 6725, provides:

"To cross, intersect, join, or unite its railroad with any other railroad hertofore or hereafter constructed at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches and other conveniences, and to exercise the right of eminent domain for that purpose."

Section 4099, Code of 1906, Hemingway's Code, Section 6728, provides:

"To do and perform all and everything necessary to the exercise of the powers expressed, and to the accomplishment of the objects of its creation and organization, including the exercise of the right of eminent domain as provided in the chapter on that subject."

In our opinion these sections confer upon railroad companies the right to exercise eminent domain in order to carry out the powers [fol. 74] given. In the last section named, 4099, Code of 1906, Hemingway's Code, Section 6728, it is expressly provided that such companies may exercise the right of eminent domain "as provided in the chapter on that subject." These sections confer upon the appellee and other railroads the right here sought to be exercised, and in the exercise of the eminent domain powers conferred, it is provided that it shall be exercised in the manner provided in the Chapter of Eminent Domain. These sections under the Railroad Chapter above set out confer the rights to be exercised by eminent domain proceedings, Section 1854, Code of 1906, Hemingway's Code, Section 1492, provides for the exercise of the right of eminent domain generally by any person or corporation having the right to condemn private property for the public use. The *chapter* then constitutes a special court and establishes the procedure to be followed and the eminent domain proceedings by the railroads to exercise the rights of crossings or intersections of other railroads, are to be exercised by this special court. The power given railroad companies is not given by Section 1854, Code of 1906, Hemingway's Code, Section 1492, but is given by the sections under the Railroad Chapter, but the proceedings in each one are alike.

We think therefore that the Railroad Company had the right to proceed under the special court created in the Chapter on Eminent Domain, and that the procedure in that chapter would govern as far as that chapter gave rights.

[fol. 75] We are also of the opinion that Congress has not taken over full control of the subject of making physical connections between railroads, conceding but not deciding that Congress has validly conferred upon the Interstate Commerce Commission jurisdiction to establish such physical connection.

The complainant and the defendant each are corporations created by the law of the State of Mississippi and each are engaged in intra-state commerce and the State has power to enforce physical connections between railroads in aid of intra-state commerce. The exercise of this power will not interfere with interstate commerce,—certainly not in any appreciable degree. Such connection will be in aid of interstate commerce also, and there is no reason to believe that Congress intended to prohibit the State's exercise of this power, even if it had the power to do so.

However, we think the Chancellor was in error in sustaining a demurrer to the bill for injunction. The right to make a physical connection by one railroad with that of another must be reasonably exercised. In other words, the point of junction must be selected with due care with reference to the interest and welfare of both railroads, and with reasonable consideration for the safety and other rights of the general public, as well as of the two railroad companies. [fol. 76] Under the facts alleged in the bill as above set out we think the complainant had a right to resort to a court of equity to have this question determined, as it could not raise the question in the eminent domain proceedings, as has been decided by this court in the case of Vinegar Bend Lumber Co. v. Oak Grove & G. R. Co., 89 Miss. 84, 43 South, 292. In other words, in this case the court construed the statute of eminent domain and adjudicated that the only question that could be decided in that proceeding was the amount of damages. That the court could not decide the right of the plaintiff in such proceedings to institute the proceedings, nor could any other question be raised than that of the amount of damages, and that the circuit court on appeal from the judgment of the eminent domain court had no greater right of jurisdiction than the eminent domain court had. It also decided that equity had jurisdiction and that it was the court of exclusive jurisdiction in all other cases than the assessment of damages.

We think it certainly could not be that one railroad company can alone select a place of junction regardless of circumstances or conditions. It has the right to intersect such railroad or cross it whenever the conditions are such that it may do so without endangering unduly the public safety or the rights or interests of the other railroad company considered with reference to the feasibility of the proper junction at a more reasonable point, having due regard to the circumstances, the interests of the two railroads, and that of the general public.

[fol. 77] The judgment will be reversed, the demurrer overruled, and the cause remanded, with leave to answer the bill within thirty days, or such additional time as the Chancellor may allow.

Reversed and remanded.

[fol. 78] STATE OF MISSISSIPPI,
Hinds County:

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi, do certify that the foregoing is a true and correct copy of the opinion delivered by the court in the cause therein, stated, to-wit No. 22,820—Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Co., as the same appears of record in my office.

Given under my hand, with the seal of said court affixed, at office in the City of Jackson, Miss. this the 26th. day of May, A. D., 1923.

W. J. Buck, Clerk Supreme Court.

[fol. 79] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR—Filed April 27, 1923

Comes the appellee, the Jackson & Eastern Railway Company, by attorneys, and respectfully suggests that there is error in the opinion and decree in this cause and for grounds states:

The bill invoked the jurisdiction of the Court of Equity to restrain, by mandatory injunction, the exercise of the power of eminent domain expressly granted by the Legislature of the State of Mississippi, in pursuance of the mandate of the Constitution, Section 184, and the express statutory powers conferred upon appellee by its charter under the provisions of Sections 6702, 6711, 6722, 6725, 6728, 6729, and 6730, of Hemingway's Code.

Section 6702 requires the charter to show: "(c) The line of the proposed railroad in this State."

Section 6711, provides: "To build and construct, and thereafter to use, operate, own, sell, and enjoy, the railroad as specified and defined in the application of the projectors for its creation and organization, with one or more tracks, and to construct and operate such branches, spurs, and laterals thereto as may be necessary or [fol. 80] proper to develop the country through which its main line may extend."

Section 6722 provides: "To enter upon all lands and to survey, lay out, and construct a railroad thereon; but before so doing, it must construct and agree with the owner upon the price to be paid for the land or its use, or with the administrator, executor, or guardian, in case the owner be dead, be an infant, * * *; or it must condemn and acquire the same, if an agreement can not be made, by the exercise of the right of eminent domain as provided in the chapter on that subject."

Section 6725 provides: "To cross other railroads.—To cross, intersect, join, or unite its railroad with any other railroad heretofore or hereafter constructed *at any points on their routes*, and upon the

ground of such other railroad company, with the necessary and proper turn outs, sidings, switches, and other conveniences, and to exercise the right of eminent domain for that purpose." (*Italics ours.*)

Section 6728 provides: "General grant.—To do and perform all and everything necessary by the exercise of the powers expressed, and to the accomplishment of the objects of its creation and organization, including the exercise of the right of eminent domain as provided in the chapter on that subject."

Section 6730 provides: "A railroad company chartered under this chapter may, after beginning the construction of its road, make all necessary or proper changes in its course or direction from that specified in the application for its incorporation, and may, by the [fol. 81] consent of the railroad commission, change its terminal point."

These charter provisions are in conformity to Section 184, of the Constitution, which provides: "All railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the State shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with roads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without unnecessary delay or discrimination."

The Chapter of Hemingway's Code on Eminent Domain Section 1494, provides: "When any person or corporation having the right so to do shall desire to exercise the right of eminent domain, he or it shall make application therefor in writing, and the owners of the property sought to be condemned and mortgages * * * shall be made defendants thereto which shall state with certainty the right and describe the property sought to be condemned, showing that of each defendant separately."

The question sharply presented by the opinion of the Court herein is whether, under the Constitution and statutes hereinabove recited, the exclusive power of the selection of the point of intersection of railroad tracks is delegated to the condemning railroad company and not within the control of a court of equity at the suit of the proposed condemnee.

[fol. 82] 1. The bill in this case prays, and the Court has by its opinion, maintained a mandatory injunction against the right of the Jackson & Eastern Railway Company under its charter to select the point of intersection with the Alabama & Vicksburg Railway tracks and by proceedings in eminent domain under its charter powers to condemn the right of way and track of the Alabama & Vicksburg Railway Company at the point designated in the petition of eminent domain and described therein specifically.

2. Where the court, as here, has held that the use sought to be enforced was a public one, and the statute expressly confers power upon the condemning company to intersect or join the railroad at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches, and other conveniences, is there any power in a court of equity, particularly at the instance of the condemnee, to judicially restrain such legislative power and require the condemnor to select another and different point for intersection?

3. All of the elements of injury complained of pertinent to the condemnation proceeding can be compensated therefor by damages.

4. The alleged injury in the manner of construction of the railroad of appellee at points other than those covered by the condemnation proceedings can not be considered in a suit to restrain the condemnation.

[fol. 83] 5. The alleged proposed negligent construction of the railroad of appellee at points other than the place of condemnation and the apprehended danger to appellant's railroad and bridges by overflow from Pearl River by such construction can not be considered on a bill for a mandatory injunction to restrain the condemnation proceedings.

6. If all of the foregoing propositions are untenable, the bill in this cause being for a mandatory injunction of the eminent domain proceedings, the record of which is made an exhibit to the bill, shows that the appellant is not entitled to any relief thereon.

The bill concedes that the appellee has the right to join its railroad by the proposed switch and thereby admits that the use by such joinder is a public use, but contends that appellant, condemnee, has the right to object to the point of intersection selected by appellee; and that upon such objection, appellant has the right to invoke the injunctive process of a court of equity and enjoin the appellee from intersecting at the point named in the eminent domain proceedings selected by it, and have the Court or Chancellor select the point at which the intersection should be made, and this is the holding of the opinion.

In the first place, this holding is not the theory upon which the bill is predicated. The bill does not pray that the Chancellor shall select the place of intersection. It prays that the point selected shall be enjoined, but does not claim that the Chancery Court has the power to select the point of intersection. The theory of the bill is [fol. 84] that appellant has the right to object to the intersection at the point selected and to require the appellee to join at some other point not indicated in the bill, but which would be agreeable to the appellant. In effect, it is a bill to compel appellants and appellee to agree on a point of intersection.

Essentially, the bill is in effect a plea in abatement to the eminent domain proceedings. It objects to the place sought to be enforced by the appellee for the joinder and contends that some other place

should be selected, but it does not name any other place, and the rule is that a plea in abatement "must not only point out the plaintiff's error, but must show him how it may be corrected and furnish him with materials for avoiding the same mistake in another suit in regard to the same cause of action, or, in technical language, must give the plaintiff a better writ." 1 Ency. Pl. & Pr., page 2.

The bill makes the record of the eminent domain proceedings an exhibit and the allegations of the bill are contradictory of the exhibits and the exhibits control the allegations of the bill. *House v. Gumble*, 78 Miss. 259, *McNeill v. Lee*, 79 Miss. 455, *Independent Order v. Monereif*, 95 Miss. 419, *Carpenter v. Douglass*, 104 Miss. 74.

An inspection of the record of the eminent domain proceedings shows that it is a proceeding to condemn certain specific parts of the right of way and track mentioned therein and shown on the exhibits thereto, and it avers (record, page 22) "that the connection which the appellant herein seeks to acquire by condemnation proceedings with the main line of the defendant, A. & V. Railway [fol. 85] Company, is to be a No. 9 turn out and the use of $\#75$ rail of the same character and design which is now used on the line of the A. & V. Railway Company at the point of connection," and after describing the character of the connection and its location, then (Record, page 24) "the installation to be made under competent supervision and the workmanlike manner in accordance with the standard of the Alabama & Vicksburg Railway Company."

The blue print, Exhibit C to the bill, shows that a standard No. 9 turn out is according to the approved form of the A. & V. Railway Company by E. Ford, Assistant to the President, and so far from being a joinder of tracks on a curve, as alleged in the bill, it shows that the tracks are to be joined at an acute angle and practically straight. This diagram made exhibit to the eminent domain proceedings and an exhibit to the bill controls and shows that the allegations of the bill as to the curves and dangers arising therefrom are not supported by the record, and that the averments of the eminent domain proceedings are that the work is to be done according to the standard practice of the Alabama & Vicksburg Railway Company. The other exhibit, C, being a blue print of the Alabama & Vicksburg Railway Company, filed with the bill, shows that the point of intersection of the proposed switch by appellant is practically straight, and that the curvature of the Jackson & Eastern Railway over the right of way of the Alabama & Vicksburg Railway is a very gentle curve, and not the alleged sharp and dangerous intersection averred in the bill. Besides, the exhibit to the petition in the eminent domain proceedings shows that the joinder is in accordance with the allegations of the petition and that the alleged dangers of such [fol. 86] joinder are not sustained by the exhibits nor by the petition.

There is no allegation in the petition nor diagram or exhibit showing where the main line of the Jackson & Eastern is located, and the bill avers that appellee's "line of railway projected and proposed to be built by defendant for many miles, perhaps ten or fifteen,

practically northward and up Pearl River from the place of the proposed junction is to all intents and purposes parallel to Pearl River itself;" and then proceeds to complain that the construction of the road on the proposed right of way would increase the dangers to appellant's road and bridges by reason of the alleged embankment in the proposed right of way preventing the overflow of Pearl River and thus of appellant's track and bridges.

It is also complained that after this junction shall have been made by the switch track that the Jackson & Eastern Railway Company proposes to use the main tracks and bridges of the Alabama & Vicksburg Railway Company and its terminal facilities in Jackson, Mississippi, which allegation is entirely remote to the matter of the junction of a switch track to promote the interchange of cars and whereby a compliance with Section 184 of the Constitution and the charter powers and duties of appellee and also of appellant could be carried out. Of course, there could be no user of the tracks of the Alabama & Vicksburg Railway Company, or its terminal facilities other than as a means of interchange of cars under the condemnation [fol. 87] proceedings, and to infer that a condemnation proceeding for a junction of the switch track would carry with it the trackage right over the main line of the Alabama & Vicksburg Railway Company for some three miles into Jackson and the use of the Alabama & Vicksburg Railway Company's terminals in Jackson, which could only be secured by a trackage contract, is *brutum fulmen*.

Eminent domain is the right of the Nation or the State, or all those to whom the power has been lawfully delegated to condemn private property for public use and to appropriate the ownership and possession of such property for such use upon paying the owner due compensation to be ascertained according to law." 20 Corpus Juris, 513.

City of Cincinnati v. Louisville & Nashville Railroad Company, 223 U. S. 390, 400, 56 L. Ed. 483, holds:

"But the right of every State to authorize the appropriation of every description of property for a public use is one of those inherent powers which belongs to State Governments without which they could not well perform their great functions. It is a power not surrendered to the United States and is untouched by any of the provisions of the Federal Constitution provided there be due process of law; that is, a law authorizing it and provision made for compensation. This power extends to tangibles and intangibles alike. [fol. 88] A chose in action, a charter or any kind of contract are, along with the land and movables, within the sweep of this sovereign authority. * * * All of this has been so long settled as to need only the citation of some of the many cases" (citing cases).

In that case, there was the condemnation of a right of way for a railroad track across a strip of land of the City of Cincinnati, devoted to the public use of the municipality.

Brown v. Beatty, 34 Miss. 227, holds:

"1. * * * "The right of eminent domain is an inherent and essential element of sovereignty; it results from the social compact

and would exist, without any express provision of the organic law upon the subject." * * *

"4. * * * It is the right and duty of the State to promote the welfare and secure the happiness of its members, to facilitate and cheapen the transportation of the products of labor, and to increase intercourse among the citizens. The construction of railroads and other works of internal improvements, are obviously well calculated to promote these objects; and the legislature may make, or cause them to be made, at the public expense. And when such enterprises are engaged in *by* private individuals under charters of incorporation, although in respect to the anticipated pecuniary gain of the corporations, they may be regarded as individual and private, yet the object and purpose of the incorporation being the public advantage, [fol. 89] they are also works of a public character. The legislature may, therefore, in the exercise of the right of eminent domain, provide for the appropriation of private property, to an incorporated railroad company, so far as it may be necessary, for the completion of the work, first securing the payment of a just and full compensation therefor to the owner." * * *

"7. * * * Where the legislature has authorized the erection of a work of internal improvement, and a mode is prescribed, by statute, for the assessment and payment of damages resulting to individuals from the construction of the work, the parties injured are confined to the remedy prescribed; which is, without any negative words used, exclusive of the remedy which would otherwise exist at common law. See 5 Eng. L. & E. Rep. 104; 5 Wharton, 256, 1 Am. Railway Cases, 206, 15 Mass. 364, 16 Ib. 466, 31 Maine R. 215, 4 Wend. 669; Contra, see 5 Cow. 165, Carrv. The Georgia Railroad Company, 1 Kelly (Ga.) R. 524."

In that case, touching the exercise of the right of eminent domain and the delegation thereof to railroads, it was said:

"It is the object and primary duty of every commonwealth to promote the welfare and to secure the happiness of its members. And it is undoubtedly the right, as well as the duty, of the legislature to advance these objects by a wise and judicious exercise of its delegated authority. To facilitate and cheapen the transportation of the products of labor, and to increase the intercourse amongst the [fol. 90] citizens, are amongst the means, obviously, best calculated to promote these objects. Railroads and similar works of internal improvement, are the appliances best adapted to these purposes. Consequently, when the legislature deems such work expedient, the duty and right devolves upon it to make them, or to cause them to be made at the public expense. But even where such enterprises are engaged in by individuals under charters of incorporation, they are not the less undertakings in which the public have an interest. They are public works intended to promote the interests of the community. The individual corporators, in the anticipated pecuniary benefit which may result to them, have an object and an interest distinct from that of the public. In that respect the enterprise is individual.

and the corporation private. But the object and purpose of the incorporation are the public advantage. This gives to the work its public character. A corporation created by the legislature with a view to the construction of a work of public utility, is the agency or means by which its intentions are designed to be carried into effect. When therefore the object justifies it, that is when by means of an incorporated company it is proposed to construct any work of internal improvement, useful and beneficial to the public; and it is necessary to the completion of the work, all the authorities hold (and there seems upon principle no reason to doubt) that in the exercise of the right of eminent domain the legislature may by law provide for taking and applying private property to that purpose, a just and full compensation being first made to the owner therefor. Indeed, this precise question, although never before directly and expressly decided in this court, was scarcely to be considered an open one."

[fol. 91] In *United States v. Candler*, 229 U. S. 53, 57 L. Ed. 1062, it was held that the power of the United States in the matter of navigation of streams extended to the taking of the bed of the stream and necessary banks without compensation, though compensation was to be made for the private property destroyed on either bank.

In *Lewis Blue Point Company v. Briggs*, 229 U. S. 82, 57 L. Ed. 82, it was held that the United States under its sovereign power of eminent domain could take, for the deepening of a channel, oyster beds which lay at the bottom of the stream without compensation for the taking thereof.

These cases demonstrate the constitutional and legislative power of the State and United States to take property necessary for a public use by legislative declaration, and where there is private property taken there must be compensation, and they further demonstrate that property already used for a public use by a railroad company for its tracks is subject to condemnation for the use of another railroad in its crossings and junction switches and as authorized by the charter of the appellee company.

This proposition is affirmed in the opinion in this case in holding that the use was a public one and that eminent domain proceedings would lie to condemn the right of way for the switch track of appellee, but the right is qualified in the opinion by the right of the Alabama & Vicksburg Railway Company, the condemnee, to object to the point on the route selected by appellee for the junction.

[fol. 92] This limitation so decreed, we respectfully submit is beyond the judicial power of the court and undertakes to substitute the judicial power of the Court for the express legislative power exercised under the Constitution and charter of appellee to condemn this particular right of way at the point indicated and in the manner indicated in the petition of eminent domain.

The charter of appellee by the sections above quoted and especially by Section 6725, Hemingway's Code, provides that appellee shall have power, "to cross, intersect, join or unite its railroad with any other railroad heretofore or hereafter constructed at any points on

their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches, and other conveniences, and to exercise the right of eminent domain for that purpose." Here, the express legislative delegation of the power of eminent domain given the appellee is "to cross, intersect, join, or unite its railroad with any other railroad * * * at any points on their routes." This power is conferred upon the appellee and necessarily means that appellee is given the legislative delegated power to select the points on the routes at which to cross or join. The legislative declaration does not confer power upon the railroad company whose tracks are sought to be crossed or joined or any power whatsoever to object to the point selected by the appellee under its charter. The appellee, by the express language of its charter, stands as the sovereign with the delegated power as sovereign, to join or [fol. 93] cross at any points—mark: "any points"—and thus having the power of the sovereign delegated by the legislature to do this act, it does not lie either in the Alabama & Vicksburg Railway Company, or in the Court, to invade the express legislative declaration and restrain, by mandatory injunction, the exercise of this delegated power of the sovereign.

The cases are numerous which hold that where the legislative grant of the right to cross or join is made, that the point of selection is the exercise of the power and being a legislative grant, the courts will not inquire into its exercise.

A case directly in point is *Lake Shore & Michigan etc. Railroad Co. v. Chicago, etc. Railroad Co.*, 97 Ill. 506. There, the legislative grant is to cross and intersect any intervening railroads "at any point on its route", the precise language used in the charter of the Jackson & Eastern Railroad Company, except that the charter of the Jackson & Eastern Railroad Company uses the plural, "points" instead of "point". The Railroad Company filed a bill against the Railroad Company seeking to cross under eminent domain proceedings, to enjoin the condemnation proceedings, just as here, wherein it was averred that the complainant's business was constantly increasing; that more than 3,500 cars and about 400 engines passed daily over the premises in question; that complainant intended to construct other tracks; that they could not properly transact their business or do their duty to the public without the use of the whole of said premises; that any interference therewith would cause great or irreparable [fol. 94] injury to them and to the interest of the public committed to their charge as carriers; that if defendant's railroad should be constructed and operated as proposed, the business would be almost double; that such increase would so hinder and embarrass complainants in transferring freight and running trains as to cause an injury constantly increasing and not susceptible of compensation by damages in a case at law and would impair and infringe and destroy the franchises of complainants, and that the construction and operation of defendant's railroad, as proposed, would be a nuisance of a serious and irreparable nature in the delay of business and increased danger to life. It was held:

"5. Railroad Crossing another has the right to select point and manner of intersection. Under the present legislation a railroad company is expressly authorized, in its location and construction to cross and intersect any intervening railroads at any point on its route, and this, by necessary implication, is a legislative declaration that the subordination of premises already occupied by a railroad company to the use of another for a cross-way, is a change in the use which the public good demands; but the corporation seeking the right of way, when the parties can not agree, must select the place and manner of the proposed crossing, and the character and conditions of the use sought, and should state the same in the petition for condemnation, to afford the proper basis for ascertaining the compensation to be paid."

[fol. 95] And the Court, at page 521, said:

"The authority expressly given such corporation, to cross and intersect intervening railroads at any point on its route, is, by necessary implication, a legislative declaration that the subordination of premises already occupied by a railroad, to the use of another railroad, for a crossing, is a change in the use, which the public good demands in all cases where the new company can afford to pay full compensation therefor. And, unless it be the law, that upon failure to agree in that regard, the company thus crossing is to select the point of crossing and prescribe the manner of crossing, as a basis for the ascertainment of the proper compensation to be paid therefor, no new railroad, under our laws, can lawfully locate its route upon any route whatever involving the crossing of any intervening railroad, without the consent of the owners of such railroad. The General Assembly certainly never intended to bring about such a result. If the law be otherwise the passage of this general railroad act was an idle ceremony." * * *

"The security against a wanton and arbitrary exercise of this power, upon mere whim or caprice, and that in all cases the point and manner of taking selected will be that least injurious to the owner and yet suited to the public necessity, is found in the fact that such corporations will be induced by considerations of their own best interest to select, in making such crossings, that practical place [fol. 96] and that practical mode which will be the least detrimental to the owner, because the corporation so selecting is required by law to make the owner full compensation, and the more injurious to the owner the place selected and the mode chosen, the greater will be the amount of necessary compensation to be paid. It is assured that no corporation formed under this act will ever do so foolish a thing as to demand, under these proceedings, from the owners of an intervening railroad, the privilege of crossing at a point and in a mode so destructive of the interests of such owners that full compensation therefor will be so enormous that the new company could get no profit or gain by the payment thereof."

1 Lewis Eminent Domain, Section 239, page 566, states the rule thus:

"When authority to take property for public use has been conferred by the legislature, it rests with the grantee to determine whether it shall be exercised, and when and to what extent it shall be exercised, provided, of course, that the power is not exceeded or abused."

United States v. Baltimore & Ohio Railway Company, 7 Amer. & Eng. Annotated Cases, 338, holds:

"The adjudicated cases likewise established the proposition that while the courts have power to determine whether the use for which private property is authorized by the legislature to be taken is in fact a public use, yet, if this question is decided in affirmative, the [fol. 97] judicial function is exhausted; that the extent to which such property shall be taken for such use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made."

State ex rel Clark v. Superior Court, etc., 114 Pac. (Wash.), 414, holds:

"2. Eminent Domain.—Location of right of Way—Power of Corporation.

"Except as especially restricted by the legislature, those invested with the power of eminent domain for a public use, can make their own location according to their own views as to what is best or expedient, and this discretion cannot be controlled by the courts; therefore a contention in condemnation proceedings that the necessity of adopting the particular road located was not proven can not be maintained."

Mt. Vernon-Woodberry Cotton Duck Company et al. v. Alabama Interstate Power Company, 65 So. (Ala.), 287, affirmed in the Supreme Court of the United States, in 240 U. S. 30, 60 L. Ed. 507, is a very instructive case.

It holds:

"The manufacture, supply, and sale to the public of power produced by water as a motive force is a public use for which land, water, and water rights may, consistently with U. S. Constitution, 14th Amendment, be condemned.

[fol. 98] "The power of eminent domain is an attribute of the sovereignty of the state, and is absolute except as restrained by the Constitution.

"The State may authorize a foreign corporation, lawfully empowered to promote a public use, to exercise the power of eminent domain, and may consider the right to take the property of a corporation already condemned under the power of eminent domain.

"Where the use for which property is sought to be condemned is public, the judgment of the legislature as to the expediency of authorizing the exercise of the power is conclusive and will not be considered by the courts; the policy of a statute being no concern of the courts.

"The validity of a statute conferring the power to condemn property for a public use, and requiring compensation therefor, may be attacked only on the ground that the statute on its face is too indefinite or uncertain to be administered, or the power intended to be conferred, to be practically utilized, or that it illegally discriminates between members of the same class." * * *

"The court will not consider the wisdom or policy of a valid statute, but will administer it as written." * * *

"The court will confine a party condemning property to the property rights acquired, and a proceeding to condemn under a statute will not be interfered with on the theory that if condemnation is allowed the condemnor will without restraint transgress his limits and interfere with rights not condemned."

[fol. 99] That the grantee has the sole power to select the place for condemnation without control of the courts is held in the following cases:

- Mayor v. Railroad, 90 Atl. 515;
- N. Y. C., etc., R. R. Co. v. Dailey, 109 N. Y. Sup. 501;
- State v. Superior Court, 114 Pac. 444;
- Chicago R. R. Co. v. Mason, 23 S. D. 564;
- Coit v. Owenby-Wofford Co., 166 N. C. 136;
- United States v. Burnley, 172 Fed. 615, affirmed 179 Fed. 1, wherein it was said: "Whether there was a more feasible plan was immaterial.";
- District of Columbia v. Washington, etc., Co., 43 App. Dis. of Columbia, 344;

The question of necessity distinct from public use is legislative and can not be reviewed by the courts in the following cases:

- Southern Ry. v. City, Ann. Cas. 1913 E. 153;
- L. & N. R. R. Co. v. City, 24 L. R. A. (N. D.), 1213;
- In re City of New York, 147 N. Y. Sup. 1057;
- Vinton Colliery Co. v. Blalick, etc., Ry., 226 Pa. 131.

Legislative discretion is conclusive of necessity and propriety.

- U. S. v. Chandler R. R. Co., 229 U. S. 53, 57 L. Ed. 1062, supra;
- Lewis Blue Point, etc., Co. v. Briggs, 229 U. S. 82, 57 L. Ed. 82;
- City of Boston v. Tolbert, 206 Mass. 82, 89, 90;
- Hayford v. Municipality, 102 Me. 340, 344, 345;
- [fol. 100] Clendaniel v. Conrad, Ann. Cases, 1915-B, 968, affirmed 235 U. S. 712;
- Jeffress v. Towne, 154 N. C. 490;
- Arthur v. Board, 141 Pac. 1;

Pittsburg, etc., Co. v. Liston, 40 L. R. A. (N. S.), (W. Va.), 602;
 Lavelle v. Towne, 49 Colo. 290;
 Boom Co. v. Patterson, 98 U. S. 403, 406;
 Struther v. Dunkirk, etc., R. R. Co., 87 Pac. 282;
 Campbell v. Metropolitan Ry. Co., 82 Ga. 320;
 Knoblock v. Minneapolis, 56 Minn. 325;
 Lynch v. Forbes, 161 Mass. 302, 308;
 Mills Eminent Domain, Sec. 11.

Cases can be found in which the legislature has delegated to commissions, or other independent bodies, to determine the necessity and propriety of the exercise, but these cases have no bearing upon this case for the Legislature has delegated to the railroad company by its charter the right of selection.

This rule does not in any way conflict with the Vinegar Bend Lumber Compact Case, 89 Miss. 117. That case holds that whether the use is a public one, is a judicial question as declared by Section 17 of the Constitution, and that being a judicial question the court will inquire as to whether there has been a legislative delegation of authority to the particular corporation to exercise the power of eminent domain, and that in this inquiry a court of equity would restrain a corporation which did not have power of condemnation granted to it by the legislature, and hence its exercise of the right of condemnation would not be for a public use.

In the case at bar the opinion of the court holds that the use is public, and hence cites the provisions of Section 17 which is the only limitation on the power of eminent domain provided, and this does not extend to railroads, as it is beyond controversy that the crossing of railroads is within the power of the legislature, and is a reserve power in the grant of charters thereto. This is illustrated by *Alabama & Vicksburg Railway Com. v. Telegraph Co.*, 88 Miss. 438, wherein this appellant sought to restrain the Telegraph Company from exercising the right of eminent domain; and the Court there said, page 445:

"It is just as clear that that company was duly and regularly incorporated and under our statutes had the authority to exercise the right of eminent domain in this case."

And the Court affirmed the decree as to the A. & V. Ry. Co. which denied the injunction to restrain the Mississippi Telegraph Company from obtaining a right of way over the right of way of the railroad company. In that case the court held that the Cumberland Telephone Company was without authority to exercise the power of eminent domain, and as to it the injunction of the railway company was maintained, but as stated, the Telegraph Company being authorized by the statutes of the State to exercise the power of eminent domain was held not to be subject to injunction by the Alabama & [fol. 102] Vicksburg Railway Company from the exercise of this statutory delegation of the sovereign power of eminent domain.

The condemnor has such an interest as may be necessary for the exercise of the franchise or the conduct of the business. *City of Atlanta v. Jones*, 135 Ga. 376; *Reed v. Board*, 100 Miss. 167.

In *Georgia Granite R. R. Co. v. Venable*, 129 Ga. 341, it was held that even though the notice of condemnation stated that the condemnor desired a right of way in fee, the statute would attach to such proceeding the restriction that the company should only acquire such interest as would be necessary for the exercise of its franchise and conduct of its business with reversion to the owner if the property ceased to be used for conducting the business.

By condemnation, the railroad company acquires merely an easement. *Cleveland R. R. Co. v. Smith*, 177 Ind. 524; *St. Louis, etc., R. R. Co. v. Temple, etc., R. R. Co.*, 170 S. W. 1073.

Touching the allegations of the bill as to the alleged damage to the Alabama & Vicksburg Railway Company, by the construction of the road, at other places than at the point of condemnation and embraced within the condemnation proceedings, would say that this is remote, and not in any way involved in the condemnation proceedings. If, after the condemnation is had and the road is built, there is injury from negligent construction, this is in no way covered by the damages [fol. 103] allowed in the condemnation proceedings and not to be considered in the condemnation proceedings.

In *Kansas City, etc., R. R. Co. v. Lackey*, 72 Miss. 881, it was held: "Damage paid for the right of way to the land owner does not cover improper construction, but only proper construction of the railroad, and for any improper construction of the railroad the Company would be liable even though it had previously condemned the right of way."

That there may be a future injury by reason of construction of the projected road is not ground to enjoin the use, for if the road as constructed violates the judgment in the condemnation proceedings and the estate thereby created, the company could be enjoined from such improper or negligent use.

Western Union Tel. Co. v. L. & N. R. R. Co., 107 Miss. 626, 65 So. 650, 652;

Alabama Interstate Power Co. v. Mt. Vernon Woodberry C. D. Co., 65 So. 287, *supra*;

In *Richmond, etc., R. R. Co. v. Louisa R. R. Co.*, 13 How. (U. S.), 71, 14 L. Ed. 55, where one railroad was to cross another under eminent domain proceedings, it was held:

"And if the Louisa Railroad Company should infringe upon the rights of the Richmond Company, there would be a remedy at law, but the apprehension of it will not justify an injunction to prevent them from building their road."

[fol. 104] Injunction will not be granted to restrain the exercise of eminent domain upon the mere apprehension that injury will result in irreparable loss from the particular act, namely, the condemnation of the particular ground in controversy, for no injury that is

not shown to be an irreparable one—and this the legislature has declared could not be—could be the ground of injunction.

McCutcheon v. Blanton, 59 Miss. 116, 22 Cye, 758;

Pearman v. Wiggins, 60 So. (Miss.), 1;

Mayor v. Collins, 60 So. 576.

The measure of damages in condemnation proceedings is prescribed by Section 1503, Hemingway's Code:

"The defendant is entitled to due compensation not only for the value of the property to be actually taken as specified in the application, but also for damages, if any, which may result to him as a consequence of the taking."

The elements of damage in condemnation proceedings are thus defined in 3 Elliott on Railroads, Section 1607, 3d ed., page 437:

"We have seen in the preceding section that the condemnation and construction of a railroad across the right of way and tracks of another company may be a taking of property within the constitutional limitations that just compensation must be made. Since compensation must be made in such cases it follows that there must be some rule for estimating the compensation and defining what [fol. 105] elements shall be considered in making up such estimate. In the very nature of things there must usually be some injury to a railroad company by constructing another railway line across its tracks and right of way. While there are many elements of injury which result in greater or less damage and loss to the company whose line is crossed, compensation for every such element will not be allowed. The general rule is that the company whose line is crossed is entitled to recover compensation for everything which renders its property less valuable, causes it additional expense in restoring its property to a safe condition for use, renders it less able to transact its business or makes the transaction of its business more expensive. Thus a recovery can be had for the land or property actually taken, for the destruction of buildings, fences or the like, for the cost of restoring the tracks and right of way to a safe condition, for the expense of the erection of new structures made necessary by reason of the crossing, and, also it has been held, on account of contingent loss which may result because of additional exposure to hazards by fire or otherwise. Compensation is not confined to such elements of damage as may arise at the actual place of crossing. It has been held that a company whose line is crossed is entitled to recover damages for a diminution in its capacity to do business, or for increased expense in transacting its business caused by the construction of the crossing. Where a large part of the line is rendered less useful or practically valueless, this should be considered in estimating the damages. Where new structures, such as embankments, abutments, or the like, must be erected because of the crossing, the expense of maintaining these and keeping them in repair may be considered as an element of damage. And it has also been held that the additional expense of providing a watchman,

where the same has been rendered necessary because of the great hazard resulting from the construction of the crossing, may be taken into account in estimating the measure of damages. There are other things, however, which result in more or less damage to a railway company whose line is crossed by the line of another company which can not be considered as elements of damage for which compensation must be made. No damages will be allowed for mere temporary interruption or inconvenience occasioned in the transaction of its business, for increased liability to accidents at the crossing, note 89 below, for being required by statute or ordinance to stop at the crossings, while the trains of the other company pass or before crossing, for the additional expense and trouble of ringing the bell on approaching the crossing, for the risk of being ordered to provide additional safeguards at such crossings, nor for the probable loss or decrease of business which may result because of such crossing. A company seeking the crossing, and against whom the damages are assessed, can not set off as an element of gain to the company crossed a supposed benefit which may result to it in the way of securing additional business because of such crossing."

[fol. 107] Note 89, 3 Elliott on Railroads, p. 440:

"In this case it was said: 'Accidents can be avoided by proper care. Nor are we warranted in presuming the employees would be negligent in their duty. If they observe their duty a collision need never occur. To allow damages on this claim would violate the rule that they can not be allowed on mere conjecture, speculation, fancy, or imagination; they must be real, tangible and proximate.'"

Under this rule, it is manifest that all of the things which appellant could lawfully complain of are to be and would be embraced as elements of damage in the condemnation proceedings, and hence there could not be resort to a court of equity to enjoin the proceedings when in the proceeding appellant could recover damages for all of the damages proximate to such taking.

Besides, the allegations of this bill for a mandatory injunction are made upon the affidavit of Mr. W. R. Adams, the station agent at Jackson, Mississippi, and upon information and belief. The affidavit does not conform to the rule prescribed by Section 731 of Hemingway's Code, in that, it does not show whether the facts stated were of affiant's own information, or otherwise; but in any event, a bill for a mandatory injunction, the averments of which are on information and belief, is insufficient. 22 Cyc. 926, 944.

Wherefore, we respectfully ask that the opinion and decree herein be reversed, and the decree of the Court below be affirmed.

[fol. 108] It is of prime importance to the Jackson & Eastern Railway Company that the construction of its road should not be hindered, and the powers granted in its charter of eminent domain were to accelerate the construction, and the result of the opinion herein making the question of where and how such junction should

be made, brings the suit to one of prolonged litigation, and defeats the object which the legislature had in view for the public welfare.

Respectfully submitted, Neville & Stone, Green & Green, Attorneys for the Jackson & Eastern Railway Company.

We, Attorneys for the Jackson & Eastern Railway Company, hereby certify that we have mailed a true and correct copy of the foregoing Suggestion of Error to Messrs. Thompson & Thompson, Attorneys for the Alabama & Vicksburg Railway Company, Jackson, Mississippi, this the 26th day of April, 1923.

Green & Green, Attorneys for the Jackson & Eastern Railway Company.

[File endorsement omitted.]

[fol. 109]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ADDITIONAL MEMORANDUM ON SUGGESTION OF ERROR—Filed May 9, 1923

On the question as to the jurisdiction of the Chancery Court, or of this Court, to declare at what point the intersection of the Jackson & Eastern Railway with the Alabama & Vicksburg Railway shall be made, which point is legislatively declared in the charter of the Jackson & Eastern Railway Company to be "at any points on their routes," the ruling of the Supreme Court of the United States just issued in *Advance Opinions*, published by The Lawyers Co-operative Publishing Company of May 1, 1923, page 515 in *Public Utilities Com. v. Potomac Electric Power Co.*, is conclusive, we submit with deference, on the judicial powers sought to be exercised, and wherein it is declared that even though an Act of Congress should confer jurisdiction upon the Supreme Court of the United States in determining legislative or administrative matters, that such statute would be invalid as the judiciary would have no jurisdiction of "administrative or legislative issues or controversies," citing a number of cases.

And this proposition is emphasized in Mississippi by Section 1, of Article 1, of the Constitution of 1890, which declares that the "powers of government * * * shall be divided into three distinct departments and each of them confided in a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another." Section 2: "No person, or collection of persons, being one or belonging to one of these departments shall exercise any power properly belonging to either of the others. The acceptance of an office in [fol. 110] either of said departments shall of itself and at once

vacate any and all offices held by any persons so accepting in either of the other departments."

Therefore, when the Legislature delegated its legislative power of selection at point, or points of intersection, to the Jackson & Eastern Railway Company, it was beyond the power of the Judiciary to exercise the legislative power, and declare at what point, or points, the crossings should be made.

Respectfully submitted, Neville & Stone, Green & Green,
Attorneys for the Jackson & Eastern Railway Company.

We, Green & Green, of Counsel for the Jackson & Eastern Railway Company, hereby certify that we have mailed a copy of the above and foregoing Additional Memorandum on Suggestion of Error, to Messrs. R. H. & J. H. Thompson, Counsel for the A. & V. Ry. Co., this the 8th day of May, 1923.

Green & Green.

[File endorsement omitted.]

[fol. 111] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—May 21, 1923

This cause coming on to be heard on the suggestion of error filed herein and this court having sufficiently considered the same, doth order, adjudge and decree that said suggestion of error be and the same is hereby overruled.

[fol. 112] IN SUPREME COURT OF MISSISSIPPI, SEPTEMBER TERM,
1924

CAPTION

Pleas and proceedings had and done at a regular term of the Supreme Court of the State of Mississippi begun and held at the court-room, at the Capitol, in the city of Jackson, Mississippi, on the second Monday, being the 8th day, of September, 1924.

Division A Sitting

Present: The Honorable Sydney Smith, Chief Justice, the Honorable J. B. Holden and the Honorable W. D. Anderson, Associate Justices, W. J. Buck, clerk in person and by W. J. Brown, D. C., C. L. Johnson, Marshal.

Be it remembered that heretofore, to-wit, on April 19, 1924, there was filed in the office of the Clerk of the Supreme Court of the

State of Mississippi, a certain record, which with the endorsements thereon is in the words and figures following, to-wit:

[fols. 113 & 114] IN CHANCERY COURT OF LAUDERDALE COUNTY

ALABAMA & VICKSBURG RAILWAY COMPANY et al.

vs.

JACKSON & EASTERN RAILWAY COMPANY

ORDER FOR SUBMISSION OF CAUSE TO BE HEARD IN VACATION

This cause coming on this day to be heard, on bill, and demurrer, suggestion of damages by the defendant for the wrongful suing out of the injunction herein, and on oral testimony, come the complainants and the defendant, by their solicitors, in open court, and consent and agree that said cause may be finally heard and a decree rendered therein, by the Chancellor in vacation at such time and place as may be fixed by the Chancellor, upon five days notice to the solicitors for the complainants and the defendant. It is therefore hereby ordered, adjudged and decreed that this cause be and the same is hereby submitted to be heard in vacation, before the Chancellor, on bill and demurrer, suggestion of damages, and oral testimony, to be heard by the Chancellor at such time and place as may be fixed by him, upon giving five days notice of the time and place of said hearing to the solicitors for the complainants and the defendant, and that a final decree may be rendered in vacation after said hearing.

Ordered, adjudged and decreed, this the 1 day of June, 1922.

G. C. Tann, Chancellor.

Decree rendered in vacation filed June 1st, 1922. Geo. F. Hand, Clerk.

[fol. 115] IN CHANCERY COURT OF LAUDERDALE COUNTY

THE ALABAMA & VICKSBURG RAILWAY COMPANY, THE CANAL Commercial Trust & Savings Bank of New Orleans, and Felix E. Gunter, Complainants,

v.

THE JACKSON & EASTERN RAILWAY COMPANY, Defendant

ANSWER—Filed May 30, 1923

To the Honorable George C. Tann, Chancellor:

And now comes the defendant, the Jackson & Eastern Railway Company, and for answer to so much of the bill of complaint filed against it herein as it is advised is necessary for it to answer, answering says:

One. That respondent admits the allegations contained in the first paragraph of said bill.

Two. This respondent admits the allegations contained in the second paragraph of said bill.

Third. This respondent admits the allegations contained in the third paragraph of said bill.

Four. This respondent denies that it has instituted a proceeding based upon the provisions of the chapter of the Code of 1906 of Mississippi entitled "Eminent Domain," Sections 1854 to 1877 inclusive of said Code, to condemn and take from the complainants a part of complainant railway company's right of way and road bed including a part of its main line of railroad, its crossties, and iron rails and to divest said complainant railway company of a part and a necessary part of its roadbed, right of way, cross ties, and iron rails. Respondent alleges the fact to be that, in and by said condemnation proceeding, this respondent seeks only to acquire the right to unite its railroad with the main line of the complainant, the Alabama & Vicksburg Railway Company, with the necessary and proper turn outs, sidings, switches, etc., pursuant to authority conferred upon this respondent by Section 4096 of the Code of 1906 of Mississippi, as will more fully and clearly appear by reference to the application filed by this respondent with the Clerk of the Circuit Court of Rankin County, Mississippi, attached as Exhibit "B" to the bill filed herein. This respondent admits that said condemnation proceeding was initiated by the filing with the Clerk of the Circuit Court of Rankin County, Mississippi, on the 25th day of February, 1922, of a petition or application; but this respondent denies, that, in said application, this respondent seeks to condemn a portion of complainant's right of way, as alleged in said bill. This respondent further admits that it caused the Clerk of the Circuit Court of Rankin County, Mississippi, to issue process for complainants, returnable on March 24, 1922, before a Justice of the Peace of Rankin County, Mississippi. This respondent further denies that it seeks, in said condemnation proceeding, to acquire and to take from [fol. 117] the complainant, the Alabama & Vicksburg Railway Company, any part of its right of way or road bed; but it seeks only as above alleged, to acquire the right to connect its line of railroad with that of the Alabama & Vicksburg Railway Company at the point and over the strip of land described in said application, as will be apparent from an examination of Exhibit "B" to complainants' bill. And this respondent denies that the property and right sought to be condemned in and by said condemnation proceeding is not private property within the meaning of the Laws of the State of Mississippi relating to Eminent Domain. This respondent admits exhibit "B" attached to the bill herein is a true and correct copy of said application filed by this respondent in said Eminent Domain proceeding. This respondent denies it seeks, in and by said condemnation proceeding, to divest from complainant any part of its road bed, cross ties, rails, etc.

Five. Respondent admits that the Statutes of the State of Mississippi, providing for the exercise of the right of Eminent Domain, do not authorize and empower any person or corporation to condemn any land or property of another, unless the property sought to be condemned be "private property;" but this respondent denies that the property and right it seeks to condemn in and by said Eminent Domain proceeding is not "private property" within the meaning of the Statutes of the State of Mississippi relating to Eminent Domain proceedings. This respondent denies that it seeks, in and by said Eminent Domain proceeding, to acquire the exclusive ownership of the property of the complainant, the Alabama & Vicksburg Railway [fol. 118] Company, or to divest the said Alabama & Vicksburg Railway Company of its title and right to use its right of way, road bed, cross ties, and iron rails, constituting the main line of its railroad. And this respondent further denies that the complainants will be deprived of any of their constitutional rights by said Eminent Domain proceeding instituted by this respondent; and further denies that the statutes of the State of Mississippi, under which said Eminent Domain proceeding was instituted, are violative of either the Constitution of the State of Mississippi or of the Fourteenth Amendment to the Constitution of the United States.

Six. This respondent denies that the point at which this respondent seeks to join its railroad with that of the complainant, the Alabama & Vicksburg Railway Company, in said Eminent Domain proceeding, is an improper and danferous point of junction for the uniting of the two railroads; and, in this connection, this respondent alleges that, under Section 4096, of the Code of 1906, of Mississippi, the right is conferred upon this respondent to connect or join its line of railroad with that of the complainant, the Alabama & Vicksburg Railway Company, at any point on the routes of this respondent and of the Alabama & Vicksburg Railway Company; and this respondent alleges and shows that this Honorable Court has no power to deprive this respondent of the right so conferred upon it by the Legislative Department of the State. And this respondent, upon legal advice, most respectfully alleges and shows that this Honorable Court is without the power to determine at what point on the route of [fol. 119] the complainant, the Alabama & Vicksburg Railway Company, this respondent should join its line of railroad with that of the said Alabama & Vicksburg Railway Company. This respondent further alleges and shows that, under the Constitution and the Eminent Domain statutes of the State of Mississippi, this respondent is required, to compensate the complainant the Alabama & Vicksburg Railway Company, for any damages it may sustain as the result of the joining of the railroad of this respondent to that of the said Alabama & Vicksburg Railway Company before this respondent can make the connection described in its application in said Eminent Domain proceeding. This respondent denies that in said Eminent Domain proceeding it seeks to condemn the right of way of complainant longitudinally or to acquire the benefit or use of complainant's main line or station facilities. And this respondent again denies that the property or right which it seeks to condemn in and

by said Eminent Domain proceeding is not "private property" within the meaning of the Laws of the State of Mississippi relating to Eminent Domain proceedings. And, while this respondent admits that the property and right sought to be condemned for the uses mentioned and described in its said application are already devoted to public use, yet this respondent states and shows that the right which this respondent seeks to acquire in and by said condemnation proceeding will not destroy or materially interfere with the public use to which said property is now devoted. This respondent denies that a court of equity has any jurisdiction to enforce the right given this respondent by the Constitution and Laws of the State of Mississippi touching condemnation proceedings.

[fol. 120] Seven. This respondent admits that the only question that can be litigated in a court of eminent domain is the amount of damages to be awarded the defendant, and that said court has no jurisdiction to determine the question of the right of the applicant to condemn. This respondent alleges and shows that complainants admit in their bill filed herein that the power is conferred upon this respondent in and by its charter and the Constitution and Laws of the State of Mississippi to exercise the right of condemnation; and it is further admitted by complainants that the use to which this respondent seeks to acquire in and by said condemnation proceeding is a public use, and that therefore the only question remaining for decision is the amount of damages which complainants are entitled to in said condemnation proceedings, the right to decide which question being conferred upon the Eminent Domain court by the Laws of the State. This respondent denies that complainants are without adequate remedy at law.

Eight. This respondent admits that the complainant, the Alabama & Vicksburg Railway Company, has from its creation carried persons and property for hire, and that consequently said Railway Company is devoted to the public use; but this respondent again denies that the property of the said railway company is not "private property" within the meaning of the Eminent Domain Statutes of the State of Mississippi. This respondent does not know whether complainant will object to an intersection or connection of the main line of this respondent and that of the complainant, the Alabama & Vicksburg Railway Company, at such a point as the Alabama & [fol. 121] Vicksburg Railway Company may deem proper and suitable; but this respondent submits that it is wholly immaterial to the issues here made whether the Alabama & Vicksburg Railway Company will object to said connection or not. This respondent alleges and shows that, under the Constitution and Laws of the State of Mississippi, it has a right to condemn a connection with the Alabama & Vicksburg Railway Company at any point on its route, whether the Alabama & Vicksburg Railway Company objects or not, upon the payment by this respondent of all damages that the said Alabama & Vicksburg Railway Company will suffer by reason of said connection. This respondent again denies that the point at which it seeks to condemn said connection is an improper, unsuitable and dangerous

place; but this respondent again alleges with greatest respect that this honorable court is without power in this proceeding to determine what is a proper and suitable point for this respondent to connect its line of railroad with that of the Alabama & Vicksburg Railway Company. This respondent submits that the allegations contained in Paragraph Eight of said bill, with reference to the willingness of complainant to receive and transport this respondent's passengers, trains and cars, loaded or empty, without unnecessary delay and discrimination upon the payment by this respondent to complainant of just and reasonable compensation for such services, is wholly foreign to the issues in this case. This respondent alleges and shows that it has not demanded or requested complainant to render any such services without compensation; and this respondent respectfully shows that it has a right under the law to demand of the complainant, the Alabama & Vicksburg Railway Company, to transport its cars upon the payment of the compensation fixed by law.

[fol. 122] Nine. This respondent does not know whether complainants were advised that the object and purpose of this respondent in beginning said Eminent Domain proceeding was not only to effect a junction of its road with the railroad of the complainant, the Alabama & Vicksburg Railway Company, but that this respondent also designs and purposes to run its trains, locomotives and cars over the main line of the Alabama & Vicksburg Railway Company and over its bridge across the Pearl River and to use the station facilities of the said Alabama & Vicksburg Railway Company, its side tracks, switches; but this respondent states the fact to be that it has no such purposes. Respondent further alleges and shows that, if this respondent should, at any time, attempt to use any of the property of complainants for the uses and purposes other than acquired by said condemnation proceeding, complainants would be amply protected from such wrongful use of its property by proceeding in both the criminal and civil courts of the State of Mississippi against this respondent. This respondent states that in and by said condemnation proceeding it seeks only to acquire those rights and privileges conferred by Section 4096 of the Code of 1906 of Mississippi, as will very clearly appear from the application in said condemnation proceeding.

Ten. This respondent admits the facts alleged in the Tenth paragraph of said bill but in addition thereto states that it is not the purpose of this respondent "to pass" the City of Jackson within three miles and that therefore Section 187 of the Constitution of [fol. 123] Mississippi of 1890 has no application. This respondent further alleges and shows that even if its purpose was to pass within three miles of the City of Jackson, that fact would not deprive this respondent of its right to condemn a junction with the main line of the Alabama & Vicksburg Railway Company.

Eleven. This respondent denies that the point at which it purposes in its Eminent Domain proceedings to make a junction and to unite its railroad with the railroad of the Alabama & Vicksburg Railway

Company in an improper and unsafe place for a point of junction of the two railroads. Respondent admits that it purposes to build its line of railroad for some distance in a northerly direction before the point of junction up Pearl River Valley, but this respondent denies that the construction of its said railroad in the Pearl River Valley will obstruct the flowage of overflow waters from Pearl River from spreading out and over the valley of said river, and denies that the building of said railroad will increase to a material extent the height of the water in the said river. This respondent further denies that there are not sufficient openings left in its embankment now constructed to carry off the overflow water safely, and denies that the building of said railroad will concentrate the overflow water so as to throw them with great force and violence against the railroad track of the complainant, the Alabama & Vicksburg Railway Company. It further denies that the construction of said railroad north of said junction point will greatly endanger the embankment of complainant's railroad and its tracks and property. This respondent [fol. 124] denies that the construction of said junction proceeding on a curve of the main line of the complainant, the Alabama & Vicksburg Railway Company, will render it an improper place for a junction of the two railroads; and denies that the making of said junction at said point would make it practically impossible, if both roads used automatic couplers, to couple cars at said point of junction. In this connection respondent states and shows that when said junction is made at the point proposed, and in the manner sought by said condemnation proceeding, this respondent will have no right to switch its engines or cars upon the main line of the complainant, the Alabama & Vicksburg Railway Company; that if the Alabama & Vicksburg Railway Company should have any loaded or empty cars to be delivered to this respondent, the Alabama & Vicksburg Railway Company, that if the respondent should have any cars on its tracks to be delivered to the complainant, the Alabama & Vicksburg Railway Company, such cars will be handled exclusively by the employees of the complainant, the Alabama & Vicksburg Railway Company. That contrary to the allegations of the bill of complaint it is not the purpose or intention of this respondent to switch its engines or cars upon any property of the complainant, the Alabama & Vicksburg Railway Company; and that respondent is advised that as a matter of law it would have no such right to do so.

This respondent states and shows that the fears expressed by complainants in their bill as to the danger of said junction are wholly imaginary and have no foundation whatever. In fact said fears are as baseless as the allegations contained in said bill touching the purpose of this respondent to use the main line, bridge, and terminal [fol. 125] facilities of the complainant, the Alabama & Vicksburg Railway Company. This respondent denies that if it be permitted to make the junction described in its application in the condemnation proceedings, the overflow water from Pearl River will be dammed up between this respondent's tracks and Pearl River, and this respondent denies that the making of said junction will increase the flow of water under the trestle described in Paragraph Eleven of said

bill; and denies that as a result thereof said trestle and the tracks of the complainant, the Alabama & Vicksburg Railway Company, will be destroyed. This respondent states and shows that complainant's apprehensions with reference to said danger are as baseless as the many other apprehensions and fears contained in said bill. This respondent denies that it will be necessary for complainant to construct and maintain big embankments and fills at the point of junction, but respondent states and shows that *if it* would be necessary for complainant to construct and maintain such embankments as a result of said junction, under the law this respondent would have to pay for the same in damages. And respondent denies that the building of such embankments and fills would seriously interfere with the drainage between the tracks of respondent and those of complainant and would require the solution of difficult and expensive drainage problems; and respondent denies that the building of such embankments and fills would render said junction an unusually dangerous place of junction; and this respondent states and shows that if such be the fact complainants will be fully compensated therefor in the Eminent Domain proceedings. This respondent denies that the building of said junction would materially increase the danger of accidents at Curran's Crossing.

[fol. 126] And respondent further denies that the building of said junction would endanger the giving of the block signal system of the complainant, the Alabama & Vicksburg Railway Company; and respondent denies that the said junction would obstruct the view of the train crews of the complainant, the Alabama & Vicksburg Railway Company, because of the fact that said junction is at a curve. Respondent further denies that said junction will be materially objectionable if constructed at said curve. This respondent states that whatever damages the complainant, the Alabama & Vicksburg Railway Company, may sustain as a result of the construction of said junction at said point, can be fully compensated in the Eminent Domain proceeding; and this respondent denies that the said junction will materially increase the danger to complainant's property, roadbed and tracks, and denies that said junction will gather the overflow waters from Pearl River and hurl them through narrow openings, culverts and trestles upon the embankment of the complainant, the Alabama & Vicksburg Railway Company, and respondent further denies that said junction will materially increase the danger to the complainant's railroad and cause an interference in its traffic.

This respondent denies that there is no reason why the said junction should be at the point proposed by this respondent, in this connection this respondent states and shows that, before the institution of the condemnation proceedings, this respondent had constructed a portion of the road bed north of the proposed junction point and it had acquired the right of way, or a large part of the right of way, between Sebastopol, to which point respondent's line of railroad was [fol. 127] constructed and in operation before the institution of said condemnation proceedings, and said proposed junction point; that said right of way was surveyed and staked off before the in-

situation of said condemnation proceeding and that, if this respondent should be required to connect its line with the line of complainant, the Alabama & Vicksburg Railway Company, at any other point than the one proposed, it would be necessary for this respondent to acquire a new right of way and to have new surveys made and to change its entire plan of construction, all of which would be very expensive to this respondent. This respondent does not know whether complainants would object to a junction between this respondent's railroad and that of the complainant, the Alabama & Vicksburg Railway Company, at some other point than the one proposed; but this respondent states and shows that the complainants well know that it is impractical for this respondent to change the route already surveyed and laid out, which would be necessary in order to maintain a junction at some other point.

Respondent admits that the law does not require that the junction of two railroads shall be made at a point which is dangerous and which will likely cause the destruction of human life and property, and where the maintenance of the same will inflict great and unnecessary damage and injury to the line first constructed; but this respondent states and shows that, in the first place, the proposed junction point is not dangerous and will not cause the destruction of human life and property nor will its maintenance inflict great and unnecessary damage and injury upon the line of the complainant, the Alabama & Vicksburg Railway Company, and, in the [fol. 128] next place, this respondent states and shows that the Constitution and statutes of the State of Mississippi have granted to this respondent the right to acquire by condemnation proceedings a physical connection with the main line of the complainant, the Alabama & Vicksburg Railway Company, at a point on the route of said railroad; and that the Constitution and laws of the State of Mississippi fully protect the complainant in that they require the respondent to fully compensate complainant for the damages that they may sustain as a result of said connection, and this respondent upon legal advice and with great respect submits that this Honorable Court has no power to fix a point of junction between this respondent's railroad and that of complainant, the Alabama & Vicksburg Railway Company; that the power to condemn private property for public use is placed under our system of government in the legislative department, and the legislature of the State of Mississippi has granted to this respondent the power, by condemnation proceedings, to acquire a junction with complainant, the Alabama & Vicksburg Railway Company, at any point on their route, by first paying all damages that may be sustained by said connection. This respondent states that it is wholly immaterial to the issues in this case whether or not the junction with complainant's railroad can be made at some other point than that proposed which will greatly diminish or remove the imaginary dangers apprehended by complainants. And this respondent further states and shows that complainants have no right, under the law, to dictate to this respondent at what point said junction should be made. This respondent

denies that the said junction will imperil the public safety or will [fol. 129] diminish the capacity of the Alabama & Vicksburg Railway Company to perform the duties it owes to the public; and denies that, if the junction is made by the respondent with the complainant's railroad at the proposed point, the life of the travelling public and of the employees of both roads will be endangered, and denies that said junction endangers complainant railroad's operations in interstate commerce, and that it will directly burden and interfere with said interstate commerce.

Twelfth. This respondent denies that Section 3, Paragraph 84, of the Interstate Commerce Act, as amended by the Congressional Transportation Act approved February 28, 1920, fixed in the Interstate Commerce Commission the exclusive right to compel connections between this respondent and the said Alabama & Vicksburg Railway Company. This respondent denies that said condemnation proceeding is an interference of the Federal rights controlled by the Acts of Congress and the Interstate Commerce Commission. And this respondent denies that it is estopped from maintaining said Eminent Domain proceeding alleged in the Twelfth Paragraph of said bill.

Thirteenth. This respondent denies that the property sought to be condemned in and by said condemnation proceeding involves the main line of track of complainant's railroad and the use of its main line and terminal facilities. This respondent denies that the maintenance of said condemnation proceedings threatens the destruction of property of complainant and the divestiture thereof for respondent's benefit. Respondent denies that complainants will suffer great and irreparable damages as a result of the condemnation of said junction.

[fol. 130] Fourteenth. This respondent alleges and shows that, some time before the institution of the Eminent Domain proceeding referred to in complainant's bill, this respondent filed with the Interstate Commerce Commission an application for permission to extend its railroad from Sebastopol, Scott County, Mississippi, to Jackson, Hinds County, Mississippi, as required by Paragraph 18, Section 1, of the Interstate Commerce Act as amended by the Transportation Act of 1920, and with said application this respondent filed with the Interstate Commerce Commission a map showing the exact location of said proposed extension and which map, also, showed a junction with the complainant, the Alabama & Vicksburg Railway Company, at the point described in this respondent's application in the Eminent Domain proceeding. That the complainant, the Alabama & Vicksburg Railway Company, was given notice by the Interstate Commerce Commission of the filing of said application and was given an opportunity to object to the granting of permission to this respondent to extend its line of railroad as prayed for in said application; and that the Interstate Commerce Commission referred said matter to the Railroad Commission of the State of Mississippi with the result that said Railroad Commission heard testimony for and against said ap-

plication. That the complainant, the Alabama & Vicksburg Railway Company, with full knowledge of all of said facts, entered no objection to the granting by the Interstate Commerce Commission of permission to this respondent to extend its said line of railroad as aforesaid. That two public hearings were had on said application before the Mississippi Railroad Commission and many witnesses were examined; and that, after the hearing of said testimony, the Mississippi Railroad Commission recommended to the Interstate Commerce Commission [fol. 131] Commission that this respondent be granted permission to extend its line as prayed for in said application; and that the Interstate Commerce Commission on June 12, 1921, granted to this respondent permission to so extend its said line of railroad.

That after the granting of said permission, this respondent, acquired rights of way and had the road bed graded along the route as shown by said map, and that this respondent expended a great deal of money after the granting of said permission to build its said line of railroad as shown on said map.

This respondent further alleges and shows that the complainant, the Alabama & Vicksburg Railway Company, is now estopped to object to the junction of this respondent with the said complainant, the Alabama & Vicksburg Railway Company, at the point described in said Eminent Domain proceeding, because of its failure to object to the granting to this respondent by the Interstate Commerce Commission of permission to extend its railroad as above alleged; and that the said Alabama & Vicksburg Railway Company is now estopped to contend that said point of junction is an improper junction point.

And now having fully answered, this respondent prays to be discharged with its reasonable costs.

Jackson & Eastern Railway Company, by Neville & Stone,
Solicitors.

Sworn to by S. A. Neville; jurat omitted in printing.

[fol. 132] [File endorsement omitted.]

[fol. 133] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

MOTION TO DISSOLVE INJUNCTION—Filed June 5, 1923

To the Honorable George C. Tamm, Chancellor:

And now comes the defendant, the Jackson & Eastern Railway Company, and moves your Honor to dissolve the injunction heretofore granted in said cause on bill and exhibits thereto, answer of the defendant, and oral and documentary evidence, to be introduced on the hearing of said motion. And for grounds of this motion states and shows as follows, to-wit:

One. Because said injunction was improvidently granted.

Two. Because the answer filed by the defendant shows that said injunction was improperly and improvidently granted.

Three. Because the answer of said defendant filed herein to the bill of complaint, and the oral and documentary evidence to be introduced on the trial of this motion shows that said injunction was improperly and improvidently granted.

Four. Because said bill of complaint set forth no cause entitling complainant to relief by injunction.

And for other reasons to be assigned orally on the hearing hereof.

Respectfully submitted, Jackson & Eastern Railway Co.,
Movant. Neville & Stone, Solicitors for Movant.

[fol. 134] [File endorsement omitted.]

[fol. 135] IN CHANCERY COURT OF LADUERDALE COUNTY

[Title omitted]

SUGGESTION OF DAMAGES—Filed June 5, 1923

And now comes the defendant, the Jackson & Eastern Railway Company, and suggests the following damages as the result of the granting of the injunction herein and prays that said damages be ascertained and decreed by the Chancellor at the hearing of the motion to dissolve said injunction, to-wit:

1. A reasonable fee for Solicitors of the defendant for services in said injunction proceedings.....	\$15,000.00
2. Loss sustained by defendant as result of the refusal of certain citizens of Jackson, Mississippi, to take and pay for \$93,000.00 par value of the bonds of the defendant at par, the cause of defendant's inability to build its road north of the proposed junction on account of the granting of the injunction herein.....	\$10,000.00
3. Expenses defendant will be compelled to pay in order to secure from the Interstate Commerce Commission an extension of time in which to complete its road, which extension is made necessary by the granting of the injunction herein.....	\$1,000.00
[fol. 136] 4. Damages to road bed construction before the issuance of said injunction, which damage resulted from defendant being compelled to abandon said road bed as a result of said injunction.....	\$2,500.00
5. Fees and expenses of civil engineers by defendant to testify as experts touching the facts alleged in the bill filed herein, and other expenses incurred by defendant in securing the dissolution of said injunction other than solicitor's fees	\$5,000.00
Total	\$63,500.00

In explanation of the second item of said damages amounting to \$40,000.00, defendant states that before the granting of the extension herein it had secured a written agreement from certain citizens of Jackson, Mississippi, to purchase at par Ninety Three Thousand (\$93,000.00) Dollars of its bonds on condition that the proceeds of said bonds be used in the construction of its railroad for eleven (11) miles north of the proposed junction between the defendant and the complainant, the Alabama & Vicksburg Railway; that the granting of said injunction made it impossible for the defendant to carry out its part of said agreement and as a result said citizens refused to take and pay for said bonds, and that the real market value of said bonds is now about Fifty Three Thousand (\$53,000.00) Dollars, so that defendant has been damaged the difference between \$93,000.00 and \$53,000.00, or the sum of \$40,000.00.

Jackson & Eastern Railway Company. Neville & Stone, Solicitors for the Defendant.

[File endorsement omitted.]

[fol. 137] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

NOTICE OF HEARING OF MOTION TO DISSOLVE INJUNCTION—Filed
June 5, 1923

To the Alabama & Vicksburg Railway Company, the Canal Commercial Trust & Savings Bank of New Orleans, and Felix E. Gunter, complainants in the above-styled cause, or to Bozeman & Cameron, their solicitors of record:

You are hereby notified that a motion to dissolve the injunction granted in said cause will be heard before the Honorable George C. Tann, Chancellor, at the courthouse in Meridian, Lauderdale County, Mississippi, at 10 o'clock A. M. on June 25, 1923, on bill and exhibits and answer of the defendant and oral and documentary evidence, copy of said motion and of the answer of defendant being hereto attached.

You may appear at said time and place and contest said motion if you so desire.

This the 2d day of June, 1923.

Jackson & Eastern Railway Company, Defendants, by Neville & Stone, Solicitors.

We, Bozeman & Cameron, Solicitors of record for complainants in the above styled cause, do hereby acknowledge receipt of a copy of the above notice and the motion to dissolve the injunction referred to therein, and also a copy of the answer of the defendant, the Jackson & Eastern Railway Company, to the bill filed in said cause, and

also a copy of the suggestion of damages filed with the said motion; fol. 138] and do hereby waive the services of copies of said notice of said motion, answer, and suggestion of damages by the sheriff.

This the 5th day of June, 1923.

Bozeman & Cameron, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 139] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER ALLOWING AMENDMENT TO BILL—Filed August 17, 1923

Upon application of complainant made during the taking of testimony for defendant upon motion to dissolve the injunction.

It is ordered that complainant be allowed to file the amendment to the bill shown the court and this day filed.

To which order of the court defendant excepts for reason dictated into the record.

Ordered this August 17, 1923.

G. C. Tann, Chancellor.

The Clerk will enter this order on his vacation minutes.

G. C. Tann, Chancellor.

[File endorsement omitted.]

[fol. 140] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT—Filed August 17, 1923

The complainant, the Alabama & Vicksburg Railway Company, by leave of court, caused to be filed the following additional paragraphs as an amendment to its original bill of complaint in this case, praying that it shall be numbered "Fourteenth" and be read into the original bill immediately following the paragraph thereof numbered "Thirteenth", and immediately preceding the prayer of said bill:

Fourteenth. Your orator shows and charges that at the time of the institution by the defendant, Jackson & Eastern Railway Company, of the Eminent Domain proceedings against the complainant mentioned and described in the original bill in this case, the defendant, Jackson & Eastern Railway Company, did not have a constructed line

of railroad track upon which locomotives or cars could be operated at any point or place within twelve miles, probably not within thirty miles, of the point on complainant's railway track where the defendant seeks to condemn complainant's property and to effectuate and establish a junction of the two railways. And the defendant at no time since the beginning of its said eminent domain suit has had, nor has it at the date of this amendment to complainant's bill of complaint [fol. 141] plaint any constructed railroad track upon which locomotives or cars can be operated, within twelve, probably not within thirty miles of the place on complainant's railway track at which the defendant seeks by its said eminent domain suit to condemn complainant's property and effectuate a junction.

Complainant reiterates all of the allegations of its original bill of complaint and it again makes and renews the prayers made by its said original bill of complaint.

Complainant now prays that defendant be required to answer, but not under oath, this amendment to the original bill of complaint, an answer thereto under oath is hereby specially and affirmatively waived by the complainant.

And as in duty bound complainant will ever pray.

Alabama & Vicksburg Railway Company, Complainant, by J. Blanc Monroe, S. C. McLaurin, Bozeman & Cameron, and R. H. & J. H. Thompson, Solicitors.

[File endorsement omitted.]

[fol. 142] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER CONTINUING CAUSE—Filed December 5, 1923

This cause having been partly on the merits this day in open court, but the trial not having been concluded, it is now postponed, by consent of parties, the hearing to be continued in the court house in Meridian, Mississippi, at 10 o'clock on the third Monday of January, 1924, in vacation; but if a special term of this court shall be then in session, the cause shall then be further heard in said Special Session.

Ordered, adjudged and decreed this December 5, 1923.

G. C. Tann, Chancellor

[File endorsement omitted.]

[fol. 143] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

MOTION TO STRIKE AMENDMENT TO BILL—Filed December 5, 1923

Now comes the defendant, the Jackson & Eastern Railway Company, and moves the court to strike the Amendment filed by complainant to its Bill herein of date August 17, 1923, upon the following grounds, to-wit:

1st. Because the allegations of said amendment are irrelevant and immaterial to the true issue here presented.

2nd. Because said amendment presents an issue that is wholly immaterial to a proper decision of this case.

3rd. Because if it is true that the defendant did not have a constructed line of railroad track upon which locomotives and cars could be run within twelve miles or more of the point where this switch connection is sought in the Eminent Domain proceedings, that such fact would not be a ground for maintaining the injunction herein sought to be maintained against this defendant.

4th. And for other grounds to be argued on the hearing.

Neville & Stone, J. R. East, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 144] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER OVERRULING MOTION TO STRIKE AMENDMENT TO BILL—
Filed December 6, 1923

This cause coming on this day for hearing on the motion of defendant to strike out the amendment made by complainant to its Bill, and the court having heard the same, it is the judgment of the court that said motion be, and the same is hereby overruled, to which action the defendant then and there excepted.

Ordered, adjudged and decreed this the 5th day of December, 1923.

G. C. Tann, Chancellor.

[File endorsement omitted.]

[fol. 145] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

OBJECTION OF DEFENDANT TO DIRECT INTERROGATORIES TO E. M. DURHAM, JR.—Filed December 10, 1923

Defendant objects to direct interrogatories 6, 7, 8, and 9 because said interrogatories are so general and so indefinite in their terms that the purpose of the questions is not disclosed and counsel for defendant are unable intelligently to cross them.

Neville & Stone, Attorneys for Dft.

[File endorsement omitted.]

[fol. 146] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

SUBMISSION OF CAUSE ON MOTION TO DISSOLVE INJUNCTION—Filed January 23, 1924

This cause coming on for final hearing on January 21, 1924, on pleadings, and motion to dissolve injunction and suggestion of damages, and proof, came the parties, and the Court having heard all of the testimony on all of the issues except damages claimed by the defendant on its motion to dissolve; and the hearing of defendant's claim for damages having been passed by agreement of all parties until the court shall have decided the other issues in the case and all parties consenting thereto:

It is ordered that this cause be taken under advisement by the Chancellor to be decided by him in vacation, with leave to all parties to argue the case before the Chancellor on Friday, February 1st, 1924, or upon such other day as may be mutually agreed upon, or as may be fixed by the Chancellor.

Ordered, adjudged and decreed this the 23rd day of January, 1924.

G. C. Tann, Chancellor.

[File endorsement omitted.]

[fol. 147] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

FINAL DECREE—Filed February 15, 1924

This cause coming on this day for hearing on original bill and amendment thereto, and answer of defendant and proof, and the parties having agreed to combine the hearing on the motion to dis-

solve the injunction with the hearing on the merits of the case, and the parties having further agreed to defer the hearing on the question of damages to a later date without prejudice to either party, and the hearing of said cause having proceeded from time to time, and having been submitted by agreement of all parties to be heard and decided by the Chancellor in vacation; and the Chancellor having heard and considered the same, including the pleadings, testimony and arguments of counsel, it is the *option* of the court that the eminent domain proceedings instituted by the defendant against the complainant seek to condemn greater rights in the property of the A. & V. Railway Company than a mere easement for the purpose of making its junction, and it is the opinion of the court that the J. & E. Railway Company, defendant herein, is not entitled to acquire a dominant right of ownership in the property of complainant under the law and the application should be amended to that extent. But the court is of the further opinion, upon the competent testimony, [fol. 148] that the place selected by the defendant for a junction with the railroad of the A. & V. Railway Company, is not an unduly dangerous place for the making of a junction, as alleged in complainant's bill.

It is therefore ordered, adjudged and decreed that the motion to dissolve the injunction, in this cause, be and the same is hereby sustained, and said injunction is hereby dissolved, and

It is further ordered, adjudged and decreed that complainant's bill be and the same is hereby dismissed, subject however to defendant's right to a hearing on its suggested claim for damages.

The complainant herein shall pay the costs of court.

Ordered, adjudged and decreed this the 15th day of February, 1924.

G. C. Tann, Chancellor.

[File endorsement omitted.]

[fol. 149] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

PETITION FOR APPEAL—Filed February 15, 1924

To the Chancery Court of Lauderdale County, Mississippi:

Come the complainants, Alabama & Vicksburg Railway Company, Canal Commercial Trust & Savings Bank of New Orleans, and Felix E. Gunter, and show the court that they feel aggrieved at the final decree rendered against them in the above styled cause on the 15th day of February, 1924, and that they desire to take an appeal from such final decree, to the Supreme Court of Mississippi, and that they desire a supersedeas in connection therewith, as authorized by the statute; and since the statute fails to fix or prescribe the amount or penalty of the supersedeas bond to be given by the appellants, the complainants pray the Court or the Chancellor to allow them an

appeal from such final decree and a supersedeas, and pray the court to fix the penalty of the bond to be given therefor by the appellants.

Alabama & Vicksburg Railway Company, Canal Commercial Trust & Savings Bank of New Orleans, Felix E. Gunter, by J. Blane Monroe, R. H. & J. H. Thompson, S. L. McLaurin, Bozeman & Cameron, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 150] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 15, 1924

Upon hearing the Application of the Alabama & Vicksburg Railway Company, Canal Commercial Trust & Savings Bank of New Orleans, and Felix E. Gunter, complainants, for an appeal to the Supreme Court of Mississippi, from the final decree rendered against them in the above cause on the 15th day of February, 1924, and for a supersedeas:

It is ordered that such appeal and supersedeas be allowed, upon the complainants executing and filing bond payable to the Jackson & Eastern Railway Company, with two or more sufficient resident sureties or one or more guaranty or surety companies, authorized to do business in this State, in the penalty of \$5,000.00, conditioned that the appellants will satisfy the decree complained of and also such final judgment as may be made in the case, and all costs, if the same be affirmed; such bond to be approved by the clerk of this court.

Ordered, adjudged, and decreed this the 15th day of February, 1924.

G. C. Tann, Chancellor.

[File endorsement omitted.]

[fol. 151] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

PRECIPE FOR TRANSCRIPT OF TESTIMONY—Filed February 18, 1924

The complainants will appeal to the Supreme Court from the final decree rendered in the above case on February 15, 1924, and this is to notify you to transcribe and file the Stenographer's notes of the testimony and proceedings in the said case with all exhibits thereto, within the time prescribed by statute.

J. Blane Monroe, R. H. & J. H. Thompson, S. L. McLaurin, Bozeman & Cameron, Attorneys for Complainants.

We have this day delivered a true copy of the within notice to Miss Bettie Hosey, Stenographer, this the 18th day of February, 1924.

Bozeman & Cameron, Attorneys for Complainants.

I acknowledge service of the within notice this the 18th day of February, 1924.

Bettie Hosey, Stenographer.

[File endorsement omitted.]

[fol. 152] CITATION—In usual form; omitted in printing

[fols. 153 & 154] BOND ON APPEAL FOR \$5,000—Approved and filed March 10, 1924; omitted in printing

[fols. 155 & 156] BOND ON APPEAL FOR \$5,000—Approved and filed April 19, 1924; omitted in printing

[fols. 157 & 158] BOND ON APPEAL FOR \$5,000—Approved and filed June 6, 1922; omitted in printing

[fol. 159] IN CHANCERY COURT OF LAUDERDALE COUNTY

STIPULATION RE SETTING OF CAUSE

By Mr. Neville: It is agreed in open court by solicitors for the complainant and solicitors for the defendant that the copies of the original bill and the answer of the defendant, the motion to dissolve the injunction and notice to the complainants of said motion, and the waiver of said complainant of the service of said motion by the sheriff and suggestions of damages are now presented to the Chancellor and marked filed by him may be substituted in place of the original of said papers.

It is also agreed that it all may be heard at this time by the Chancellor on said motion instead of the date named in said injunction.

[fol. 160] ARGUMENT OF COUNSEL

Mr. Monroe: We understand that they are to present their testimony first.

Mr. Neville: No, sir.

Mr. Monroe: Let the record show that they waive their right to open the case.

Mr. Neville: We don't waive anything.

Mr. Monroe: Then we can't offer anything in rebuttal.

Mr. Neville: We offered in evidence our sworn answer, we read our sworn answer and now offer it in evidence.

Mr. Monroe: Then, we don't see how we are to proceed especially as to any claim for damages.

The Court: The question of damages can be eliminated as that will come up afterwards, but when they have introduced as testimony their sworn answer they have made out their case, and they have rested whether the record shows that or not.

Mr. Neville: The burden is on them—we deny their bill, and it is not our move so far as the testimony is concerned.

The Court: The question of damages may go to the Circuit Court after the case is decided.

Mr. Neville: We don't waive our suggestions on damages.

Mr. Stone: We have read our answer and offered it in evidence and the record shows that.

The Court: That's right, you have rested your case.

Mr. Monroe: We now ask that the record show whether or not you have rested your case and whether it is now our turn to put in evidence.

Mr. Stone: Solicitors for the defendant does not consider it to [fol. 161] be up to them to say whether they have rested or not. We have read our pleadings and introduced the answer.

The Court: The record will show that the introduction of the answer has rested the case on the part of the defendant.

[fol. 162] Mr. Bozeman: In defense of the motion to dissolve the injunction the complainant offers the following testimony.

L. A. JONES, having been introduced as a witness and being duly sworn, testified as follows, to-wit:

Mr. Monroe: Before we examine the witness we desire to call the attention of the court and the attention of our adversary to the fact that in the bill we have waived a sworn answer, therefore the answer in this case is merely a pleading, but we propose to argue that to the Court at the correct time.

The Court: Did you waive that in your pleadings? But, if you did we will just let it go on, and let's now go ahead with the evidence.

By Mr. Monroe:

Q. Mr. Jones, what is your name, residence and occupation?

A. L. A. Jones, residence New Orleans, Louisiana, and occupation, president and general manager of the Alabama & Vicksburg Railway Company.

Q. How long have you been connected with the Alabama & Vicksburg Railway Company?

A. Since January 1, 1884.

Q. Continuously since that time?

A. Continuously.

Q. Are you familiar with the physical and other conditions upon that road at the proposed point of junction of the Jackson & East-

ern Railroad Company near Curran's Crossing in Rankin County, Mississippi?

A. I am.

[fol. 163] Q. Have you caused to be prepared a map showing the general location of the Alabama & Vicksburg Railway Company's lines at that point and showing the proposed line of the Jackson & Eastern Railroad Company?

A. I have.

Q. I hand you marked Exhibit "F" such a map and ask that you have it identified by the stenographer as Exhibit "F"?

A. This has been done.

This document was handed to the stenographer to be identified and it was then and there identified as Exhibit "F" to the testimony of L. A. Jones.

[fol. 164] Q. Mr. Jones, when was the question of a junction point at that place taken up with you, a junction point between the Jackson & Eastern and the Alabama & Vicksburg?

A. In the summer of 1921.

Q. Did you or did you not at that time give notice to the Jackson & Eastern of objections to that point as a point of junction?

A. The initial negotiations had reference to their freight and passenger business, the point of location of the junction was not brought to my attention by the Jackson & Eastern until somewhat later in the summer. The first conference that I had with Mr. Neville or any of the officers of the Jackson & Eastern Railroad was on September 1, 1921, and at this time Mr. Neville gave me a blue print showing the plans. On September 30, 1921 I gave in writing the objections which I had previously made verbally.

Mr. Monroe: I want now to call for a letter of September 30, 1921, addressed to Mr. S. A. Neville and signed by Mr. Jones?

Mr. Neville: We have had no such notice.

Mr. Monroe:

Q. Mr. Jones, is this a copy of the letter in question?

A. It is.

Mr. Monroe: In connection with the testimony of this witness we offer the letter in evidence and ask that same be identified as Exhibit "T."

The letter was handed to the stenographer and it was then and there so identified.

Mr. Neville: We don't think that the letter is admissible. We have no objections to it.

Q. Mr. Jones, will you read the letter to the Court?

[fol. 165] A. I will do so.

(Witness reads as follows:)

EXHIBIT T

"New Orleans, La., Sept. 30th, 1921.

S. A. Neville, Esq., President and General Manager Jackson & Eastern Railway, Meridian, Miss.

DEAR SIR: With reference to your letter of the 17th and our previous interview, I beg to say that The Alabama and Vicksburg Railway Company is inclined to arrange a connection with the Jackson & Eastern Railway, providing a satisfactory location can be agreed upon.

The point which you tentatively suggested in our conversation in New Orleans presents so many difficulties that we cannot agree to that location. Some of the more pronounced of these difficulties are as follows:

1. The alignment of your track approach toward our right of way is such that it would deflect the waters of the Pearl River in flood season directly against and across our track and threaten the destruction of our embankment.

2. The point of connection would cause converging curve from the two lines which would meet directly east of a dangerous road crossing and at a point about equally distant from two trestles and only a small distance therefrom, and at such a location as to prevent a fair view from approaching trains in either direction of our trains stopping at that point.

I have personally made a careful examination of the proposed site and of the tract immediately east thereof, and I very strongly urge that you reconsider your present line of approach and come to our line east of the Pearl River bottom, making the track connection at or near Pearson station.

Yours truly, (Signed) Larz A. Jones, President and General Manager."

[fol. 166] Q. Mr. Jones, was it or was it not a fact that you promptly gave notice to the Jackson & Eastern Railroad that fact that you objected to this point of proposed intersection?

Mr. Stone: We object to that, he has already answered that question and he has introduced the letter.

The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

A. It is a fact.

Q. Is it not a fact that you said to this gentleman that you would not object to a connection being made at a proper and not a dangerous place?

Mr. Stone: We object to that, the letter speaks for itself, and it is leading.

The Court: My understanding was that Mr. Jones wrote the letter and also made the verbal statement, I suppose that it is now the statement to which he refers.

Mr. Stone: We except to the ruling of the Court.

A. It is a fact that I made objections verbally to Mr. Neville when we had the conference, and I also made the statement that I wouldn't object to the junction being made at a proper place, such as at Pierion. I said that we would have no objections to making a connection with his line if it was made at the proper place.

Q. Did you get a reply to the letter of September 30, 1921, which is marked Exhibit "T" and has been offered in evidence?

A. I did.

Q. I hand you marked Exhibit "U" what purports to be a letter from the Jackson & Eastern Railroad Company over the signature of [fol. 167] S. A. Neville, President, dated October 6, 1921, and I ask you if that is the reply to which you refer?

A. It is.

Mr. Monroe: We offer that letter in evidence and ask that same be marked Exhibit "U" to the testimony of Mr. Jones, and we ask the Court's permission to substitute in lieu thereof a copy of the letter to be marked copy.

(The letter was offered in evidence and was then and there so identified by the stenographer.)

Q. Will you read the letter, please, Mr. Jones?

A. (Witness reads.)

EXHIBIT U

Jackson & Eastern Railway

Meridian, Mississippi, October 6th, 1921.

File No. GO-55.

Mr. L. A. Jones, President & General Manager A. & V. Railway Company, New Orleans, La.

DEAR SIR: I find your letter of the 30th ult. on my return from Washington; in discussing this matter with our engineers they advise me that they have left sufficient openings in the track to take care of just a situation as you suggest and they advise me that the results that you fear will be impossible under their plan of construction.

I do not see where our connection with you at this point would increase in any way the dangers that you speak of. In fact if it should be necessary to stop trains at our junction point it seems to me that it would be better to have it at a point where dangers from operation would be minimized, which of course is the case where trains are brought to a stop or slowed in speed.

Please let me know if you will consider this matter further and if your decision is final; of course it will be necessary for me to submit the matter to the Interstate Commerce Commission as provided in the Transportation Act and if this would have to be done I would not [fol. 168] want to lose any time in handling.

I have just returned from Washington where the Finance Board has approved my security issue and I want to start to work just as rapidly as I can get the organization in shape.

Yours very truly. (Signed.) S. A. Neville, President and General Manager."

[fol. 169] By Mr. Monroe:

Q. Mr. Jones, I notice in that letter that Mr. Neville stated, Please let me know if you will not consider the matter further, or if your decision is final, of course, it will be necessary for me to submit the matter to the Interstate Commerce Commission provided in the transportation act. As a matter of fact, did Mr. Neville submit the matter to the Interstate Commerce Commission?

A. He did.

Q. On receipt of his letter did you take steps to put your views of the situation before the Interstate Commerce Commission in document marked Exhibit "I" which I now hand you and receive in reply document marked Exhibit "J" which I now hand you. Let the gentlemen examine the documents.

Mr. Monroe: Here is the original of that Mr. Neville——

Mr. Neville: We object to that because it is a copy and no notice of it was given to the Jackson & Eastern, and because it is otherwise incompetent, irrelevant and immaterial.

Mr. Monroe: I have the original.

The Court: Isn't there a statute requiring that 5 days' notice be given—but I will overrule that objection.

Mr. Stone: We accept to the ruling of the Court.

Witness: I took steps to have the objections of our company placed before the Interstate Commerce Commission through our counsel and received a reply.

Q. In connection with the testimony of the witness we offer document marked "I" being a letter to the Interstate Commerce [fol. 170] — dated October 26th, 1921.

This Exhibit was handed to the stenographer and it was then and there so identified.

Q. Mr. Jones, will you read that letter to the Court.

A. I will, but won't you read it.

(Mr. Monroe read as follows:)

EXHIBIT I

"Oct. 26, 192-.

The Interstate Commerce Commission, Attention of Mr. Geo. B. McGinty, Washington, D. C.

GENTLEMEN:

In re Jackson & Eastern R. R. Co.

The Jackson & Eastern R. R. Co. through Mr. S. A. Neville, its President, has notified the Alabama & Vicksburg Railway Company of its desire to establish a track connection between the Alabama & Vicksburg Railway Company and the proposed line of the Jackson & Eastern R. R. Co. just outside of the City of Jackson, Miss., and just across the bridge of the Alabama & Vicksburg Railway Company from Jackson.

The connection point tentatively suggested by the representative of the Jackson & Eastern R. R. Co. presents so very many difficulties that it seems desirable for the Alabama & Vicksburg Railway Company, at this time, before any purchase or acquisition of right of way has been made by the Jackson & Eastern R. R. Co. to point out those difficulties and to indicate the objections of the Alabama & Vicksburg Railway Co., to a track connection at the point in question. The principal objections can be summarized as follows:

At the proposed point of connection both tracks will be comparatively sharp curves and the curves of the two tracks will be opposing curves.

A connection on a curve of this sort is objectionable for the following reasons:

a. It is dangerous because the views of the train crews approaching the point of connection will be necessarily impeded, thereby increasing the chances of accident.

b. Railroad construction requires the banking of the track towards the outside edge of the curve.

As both tracks should be banked at the point of connection and as the curves are opposed there, the tracks will be in opposing planes instead of approaching each other in the same plane.

c. The interchange facilities between the two roads would necessarily be in the angle between two diverging or opposing curves, which is objectionable from a construction and operating standpoint.

d. The connection thus made would require what is known as a facing point switch on a curve, which is highly objectionable.

[fol. 171]

II

The Proposed point of connection is at a place where the Alabama & Vicksburg Railway Company track is on a fill of approximately ten feet.

A connection at such a point is objectionable for the following reasons:

a. The fill being approximately ten feet in height would necessitate a fill of an equal height for all of the sidings and interchange tracks thus requiring a heavy initial expense and continuing heavy expense for maintaining.

b. The existence of these various fills would seriously interfere with the drainage between the tracks and require the solution of difficult and expensive drainage problems.

c. Operation on a ten foot fill on a curve is always more dangerous than operation on the level ground. The proposed point of connection will increase this danger by increasing the movement over such a danger point.

III

The Proposed Connection is at a Public Road Crossing

The tentative point of intersection is immediately east of the highway crossing known as Curran's crossing. This crossing has heavy highway traffic as it carries all of the traffic leading to points east of Pearl River and points eastward along the Alabama and Vicksburg Railway tracks into and out of Jackson, Mississippi. This crossing is a dangerous crossing and has already been the scene of serious accidents. The placing of a junction point between two railroads immediately at such a crossing would materially increase the amount of train movement over this crossing, thereby increasing materially the likelihood of accident at that crossing.

IV

The proposed junction is near the suburbs of the City of Jackson, and will create difficulties in the rearranging of the Block signal system of the Alabama and Vicksburg Railway Company into Jackson, thereby increasing the operating difficulties and probably causing delay in the movement of trains.

V

The proposed point of connection is in the Pearl River Bottom at a point subject to heavy annual or semi annual floods from Pearl River.

Attention is specially directed to this subject for the following reasons:

a. The Pearl River Valley is about five miles wide and is subject to periodic floods of a violent nature, as Pearl River goes out of its banks and inundates this valley at least once a year. When it does so, its waters inundate the entire valley, and are thrown into considerable force against the railroads' embankment. The proposed connection contemplates that the two railroad embankments will form a V in this valley the effect of which would be to gather the Pearl River flood from a considerable area and hurl it

out in concentrated force upon the embankment of the Alabama & Vicksburg Railway Company, at one or two special points thereby materially increasing the danger to the Alabama and Vicksburg Railway Company of annual or semi-annual washouts.

The proposed junction point contemplates that the roadbed of the Jackson & Eastern R. R. will run for approximately a mile near a dangerous bend of Pearl River and further provides that the intersection itself will be in close juxtaposition to a second dangerous bend in Pearl River, thereby materially increasing the danger to the Alabama and Vicksburg Railway Company of interruption of its traffic by high water.

For these reasons, the Alabama & Vicksburg Railway Company now at a time prior to the purchase or other acquisition of right of way in this Pearl River Bottom by the Jackson & Eastern R. R. Co. respectfully points out the foregoing many difficulties and objections to the proposed point of intersection; and respectfully requests that any further consideration of the point of intersection indicated be abandoned at this time, and that if any intersection is sought, same be sought not closer to Pearl River than Pearson's station, Mississippi.

Respectfully, The Alabama and Vicksburg Railway Company, by ———, General Counsel."

[fol. 173] Mr. Monroe: In this connection we also offer document marked Exhibit "J" being the answer from the Interstate Commerce Commission to document "I", under date of November 2, 1921.

This exhibit was then and there so identified by the stenographer.

Mr. Monroe: We want leave of the Court to substitute a copy of Exhibit "J" which I prepared for that purpose.

Mr. Neville: We object to these Exhibits as the witness had nothing to do with the communications.

The Court: I overrule your objection as he said he had knowledge of it.

Mr. Neville: We except to the ruling of the Court.

(Exhibit "J" was read as follows:)

EXHIBIT "J"

"Interstate Commerce Commission, Office of the Secretary,
Washington

November 2, 1921.

Mr. J. Blanc Monroe, General Counsel the Alabama & Vicksburg Railway Company, New Orleans, La.

DEAR SIR: The Commission is in receipt of your letter of October 26th, setting forth the objections of the Alabama & Vicksburg Railway Company to the construction of a track connection between the Alabama & Vicksburg Railway Company and the proposed line of the Jackson & Eastern Railroad Company near Jackson, Miss.

This matter was recently brought to the attention of the Commission by letter from Mr. S. A. Neville, President of the Jackson & Eastern Railway, in which he requested information as to whether it would be necessary to secure an order from the Commission so [fol. 174] that such a connection might be made. In reply he was advised that if your road was willing to have the connection installed no order from the Commission was necessary, and his attention was directed to the provisions of paragraph (9) of section 1 of the Interstate Commerce Act which set forth the Commission's power to order such a connection.

In view of this disposition of the question no further action seems to be necessary in connection with your letter at this time.

This will also serve as a reply to your letter of October 26th addressed to Mr. Gray of our Bureau of Finance.

Yours very truly, (original signed) G. B. McGinty, Secretary."

[fol. 175] Witness: I discussed the subject with my counsel and after the discussion directed him to prepare the objection and he did prepare the objections and showed them to me, but the communication was made in his name and the reply made to him.

By Mr. Neville:

Q. You didn't send it yourself?

A. It was sent under my directions.

Q. By your attorney?

A. Yes, sir.

Q. But you don't know what he did of your own personal knowledge?

A. I didn't see him put it in the envelope, I will answer that no. I directed him to do it and he advised me that he had done so.

Mr. Neville: We object to the letter.

The Court: I think it is admissible as I have already said. I think it has very little probative value, but I will admit it.

Mr. Neville: We except to the ruling of the Court.

Mr. Monroe: In order that the Court may understand these letters I will again read the letter of Mr. Jones dated September 30 and Mr. Neville's letter of October 6.

Mr. Stone: We object to him arguing the case at this time.

Mr. Monroe: I don't propose to argue it, I am just explaining the situation.

The Court: I overruled the objections.

Mr. Stone: And we have excepted to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Jones, the bill for the injunction recites that the objection [fol. 176] to the Jackson & Eastern Railroad is their using the A. & V. main line track from the proposed point of intersection into Jackson, Mississippi, and that allegation is controverted in the answer. Have you any statement to make in connection with that?

Mr. Stone: They must confine what we are trying to do from what they find in the condemnation proceedings.

Mr. Monroe: That allegation has been denied in the answer, therefore, it is an issue in this case. I will read paragraph 9 of the answer.

The Court: My understanding of the situation in this matter is it was not trying to take title to the A. & V., but that it was simply a proceeding to establish an easement in connection with the A. & V.

Judge Thompson: If the Justice of the Peace had rendered a judgment in this matter would it not have been to divest the title out of the A. & V. and invest it in the J. & E.?

The Court: Will you read the petition to me?

(The petition was read to the Court.)

The Court: Would this Eminent Domain proceeding divest the title out of the A. & V.?

Judge Thompson: Yes, sir.

The Court: I will overrule your objections to the question.

Mr. Neville: We except to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Jones, will you answer the question?

A. When Mr. Neville first came to me on the subject of this connection he asked for a conference with myself and our traffic department [fol. 177] ment in order to establish this junction point, and he specified then that he did not intend nor desire to run over our track but merely wanted to deliver freight to us at a junction point, freight and passengers and allow us to handle that freight and those passengers in our trains. He presented the matter or plans to me which, however, convinced me that he did desire to use our tracks, and I objected to the point of connection either as a point of interchange or for a point for his trains to enter upon our tracks. On the 26th day of October, 1921, Mr. Neville wrote me to the effect—

Mr. Stone: We object.

Q. Say he wrote me the following letter?

A. He wrote me the following letter—

Q. What is the date of the letter?

A. October 26, 1921.

Q. Mr. Jones, instead of the letter of October 26, 1921, refer to this one.

A. I have in my hand the following letter from Mr. Neville, dated March 13, 1922—

Q. Will you hand that letter to the stenographer and let her identify it as Exhibit "M" to your testimony.

The letter of March 13, 1922, was handed to the stenographer and it was then and there identified as Exhibit "M" to the testimony of L. A. Jones.

Q. Will you read that letter to the Court?

A. I will.

[fol. 178] (Witness reads:)

EXHIBIT M

Jackson and Eastern Railway Company

Meridian, Miss., March 13, 1922.

Mr. L. A. Jones, President & Gen. Mgr. A. & V. Railway Co., New Orleans, La.

DEAR SIR: With reference to our plans of entering Jackson with our operation and having in mind Paragraph 4, Section 3 of the Interstate Commerce Act, we respectfully ask your consent that we might be permitted to operate our trains over your rails from a point where we propose to connect with you near Curran's Crossing into the City of Jackson, making joint use of your terminals in said operation.

We will be glad to confer with you looking forward to this arrangement and agreeing on a rental charge for such operation, this arrangement to be effective just as soon as we have completed our construction and begun operation, or in other words during this year.

Awaiting your reply, I am,

Very truly yours, (Signed) S. A. Neville, President & General Manager."

Q. Attached to that letter is an envelope. Is that the envelope in which you received it?

A. It bears the heading of the Jackson & Eastern Railroad Company, Meridian, Miss. It is a registered letter which is post marked March 13, 1922.

Q. That is the date of the letter?

A. It is.

Q. It is addressed to whom?

A. It is addressed to me, but I didn't open it. The conclusion speaks for itself.

Mr. Monroe: In this connection we offer the letter marked Exhibit "M" and the envelope marked Exhibit "M-1."

These Exhibits were then and there so identified by the stenographer.

[fol. 179] Q. Mr. Jones, I now hand you the letter dated October 26, 1921.

A. Yes, sir.

Q. Will you read that letter to the Court, please, sir.

A. I will.

(Witness reads:)

EXHIBIT M-1

Jackson & Eastern Railway, Meridian, Mississippi

October 26th, 1921.

Mr. L. A. Jones, Pres. & Gen. Mgr. A. & V. Ry. Co., New Orleans, La.

DEAR SIR: I beg to acknowledge receipt of your letter of the 24th inst. file 867, as you know we ultimately expect to enter Jackson with our own operation, you can therefore see that it would be impracticable for us to throw our line back east as suggested by you, and in view of your position there is nothing further for us to do except to submit the matter to the Interstate Commerce Commission for their consideration, and of course we both will have to be guided by their conclusion. I regret very much that we could not reach an agreement between us.

Will you please be so kind as to return the blue print that I left in your office as I am having need of this every day.

Thanking you in advance, I am,

Very truly yours, (Signed) S. A. Neville, President & General Manager."

Mr. Monroe: I offer the letter in question in evidence and ask that same be identified as Exhibit "M-2."

The letter was handed to the stenographer and it was then and there so identified.

Mr. Monroe: With the consent of the Court I will substitute copies of the original for Exhibit "M," "M-1" and "M-2."

[fol. 180] Witness: I would like to finish my answer.

Q. Proceed.

A. Later on I obtained a copy of document 13361 to the Interstate Commerce Commission in which had been applied for a physical connection at Curran's Crossing and the right to use the main line of the A. & V. from Curran's Crossing, the point of junction, into the Jackson Yards.

Q. I hand you, marked Exhibit "D-1" certified copy of the proceedings in question, or rather a certificate of the Secretary of the Interstate Commerce Commission certifying to the correctness of the photographic copy of the document in question and I ask you to examine the document and state if that is Mr. Sam Neville's signature to that?

A. The paper bears the heading, "Application of the Jackson & Eastern Railway Company."

Mr. Stone: We object to that.

Q. Answer whether or not you recognize that as Mr. Sam Neville's signature?

A. I do.

Q. Do you recognize the signature at the foot of the answer, turn to that?

A. I recognize the signature at the foot, yes, sir.

Mr. Monroe: We offer the document in question and ask that same be identified as Exhibit "D-1" to the testimony of Mr. Jones.

The document was handed to the stenographer for identification and it was then and there identified as Exhibit "D-1" to the testimony of Larz A. Jones.

[fol. 181] Q. Mr. Jones have you had any recent news from the Interstate Commerce Commission?

A. I haven't finished my answer yet.

Q. Well, in order to get the record straight just answer me whether or not you have any recent news from the Interstate Commerce Commission?

A. I am advised——

Q. I hand you Exhibit "D-1"?

Mr. Neville: Let me see that.

A. This is a letter from the Interstate Commerce Commission giving the present status about the proceedings.

By Mr. Neville:

Q. It is addressed to Mr. Monroe, is it not?

A. Yes, sir.

Mr. Neville: Then we object to it. It is certainly not competent in this case, a letter from the Secretary of the Interstate Commerce Commission to Mr. Monroe.

Mr. Stone: A document signed by the Acting Secretary of the Interstate Commerce Commission to Mr. Monroe is certainly not competent.

The Court: Let me see it.

(Document read to the Court by Mr. Monroe.)

Mr. Neville: We object to it.

The Court: I think it is admissible.

Mr. Neville: We except to the ruling of the Court.

Mr. Monroe: I will have the document identified under the number Exhibit "D".

[fol. 182] The Exhibit was handed to the stenographer and was then and there so identified.

Mr. Monroe: With the permission of the Court I ask leave to substitute a copy in lieu of the original of that.

[fol. 183] Witness: Proceeding with my answer I will say in this connection that in the Mississippi Legislature on March 24, 1922, that a meeting was held before the committee on railroads of the House of Representatives——

Mr. Stone: We object to the witness discussing this bill.

The Court: Objections sustained.

Judge Thompson: This bill was discussed by whom?

Witness: The House committee.

Judge Thompson: We offer a copy of the bill.

By Mr. Monroe:

Q. I will ask you now, Mr. Jones, if you received from Mr. S. A. Neville on or about October 17, 1921, the document which I now hand you marked Exhibit "N"?

A. I did.

Q. Is that Mr. Neville's signature?

A. Yes, sir.

Mr. Monroe: In this connection we offer Exhibit "N" in evidence and ask that it be so identified.

This letter was handed to the stenographer and was then and there so identified.

(The letter was read as follows:)

Exhibit N

"Jackson and Eastern Railway, Meridian, Mississippi

Oct. 17th, 1921.

Mr. L. A. Jones, Pres. & Gen. Mgr. A. & V. Ry. Co., New Orleans, La.

DEAR SIR: With further reference to my letter of the 6th instant, unless I hear from you by the 25th, I will assume that it will be impossible for us to reach an agreement between ourselves and I will therefore apply to the Interstate Commerce Commission for authority to connect.

Yours very truly, S. A. Neville, President & General Manager."

[fol. 184] Mr. Monroe: We ask leave to substitute a copy of the foregoing instrument in lieu of the original.

Q. Mr. Jones, coming back to the proposed point of connection and the objections to that point, I would like for you to take map "F" and point out to the Court the location there and give the objections to the point as a point of junction. Before you begin I would like for the Judge to look at the map.

(Court studies the map in question.)

Q. Now, Mr. Jones, the map, Exhibit "F", does that correctly show the proposed point of junction between the Jackson & Eastern Railway Company and the Alabama & Vicksburg Railway Company?

A. It does.

Q. Will you mark with a red "J" on that map the point of intersection of the Jackson & Eastern and The Alabama & Vicksburg?

A. I have done so.

Q. As the A. & V. approaches that point of intersection is the track straight or on a curve?

A. As the Alabama & Vicksburg approaches that point from the east it is on a curve and the curve continues somewhat beyond the point of intersection.

Q. As the Jackson & Eastern approaches the point of junction from the east it is on a straight line or on a curve?

A. As the Jackson & Eastern approaches the track of the A. & V. it is also on a curve which curve is in the opposite direction from the curve of the Alabama & Vicksburg track.

Q. In other words, the track of the Alabama & Vicksburg Railway Company coming to Curran's Crossing curves to the left, while the [fol. 185] track of the Jackson & Eastern coming to Curran's Crossing curves to the right. Will you please state to the Court from a railroad point of view whether that fact is or is not objectionable and why?

A. That fact is objectionable curve for several reasons. In the first place the curve of the track interferes with the vision of the engineer of the train and cuts off from his view the track ahead of him at a comparatively short distance so as the engineer approaches on his engine from the east towards Curran's Crossing the curve of the track cuts off his view from the crossing and from the point of intersection and does not permit him to see it until close at hand at that point. Similarly, the engineer of the Jackson & Eastern being on the right hand side of the engine coming towards the crossing would have his view of the crossing to the track of the A. & V. cut off as he approaches. It would also be objectionable from the fact that in order to permit trains to operate with any speed on curves they are so constructed that the outside rail of the curve is set higher than the rail on the inside.

Q. Explain that more fully, Mr Jones?

A. As the track is laid it is so laid that the outside rail will be higher, as at this point it is 2 inches higher than the left-hand rail in order to control the force of the train, the centrifugal force, as it goes around the curve.

Q. Is that necessary?

A. Yes, sir, it is necessary.

Q. In the present instance which of the Jackson & Eastern rails would be normal, the one towards the A. & V. or the *the* one away [fol. 186] from the A. & V.?

A. If the track of the Jackson & Eastern were constructed there on that curve the rail on the outside or the south rail would be higher than the rail on the north side.

Q. The rail nearest the A. & V. track would be higher?

A. Yes, sir, on the Jackson & Eastern.

Q. And the rail of the A. & V. nearest the Jackson & Eastern would be higher?

A. Yes, sir.

Q. So that would be a tilt of the balance of the two tracks?

A. Necessarily the balance of the A. & V. track would be in tilt-

on and the balance of the Jackson & Eastern would be in section. (Ind. with his hands.)

Is there is a connection to be made at that point, Mr. Jones, what effect would this condition of the balance have upon that connection?

There would have to be an equal balance.

What will be the effect of that?

The effect of taking the elevation out of the right hand rail of the A. & V. Railway Company's track you make it extremely difficult to operate passenger trains at a high speed, therefore, it is incumbent on the company, in order to protect its trains from their speed very much. In fact, without an elevation on the track—well we don't have any tracks without this elevation on the track. But I think there are other witnesses that can testify fully on that.

Mr. Jones, getting back to the first objection you made as to [7] the view of the trainmen. I would like you to explain to the jury what that would have to do with the crews of the trains? Whenever they stop at a junction point the engineer looks to the rear of the train to get signal from the rear from his

On what side of the A. & V. track would that crew necessarily be in order that the engineer might see his men on the track?

If the A. & V. approached that intersection from the east and it is necessary to stop or stopped shortly before reaching the intersection, the engineer would be always on the right side of the engine, it would be necessary for the men to be on that side to give him signals, but it would be impossible for the men around the curve to give signals to the engineer on that side at this point.

It would be impossible for any of the train men to signal to the engineer from the side of the A. & V. which is nearest to the Jackson & Eastern proposed track?

Yes, sir, that is a fact, and it would be necessary in order to give the signals to go on the opposite side of the train, and all of the track is on a fill, and it has a long trestle at this point, and it would be extremely difficult for the trainmen to walk along side of the track and across that trestle and get in close touch with the engineer.

For the moment let's confine the testimony to the embankment there and the trestle. What side of the A. & V. track did you say it would be necessary for the trainmen to be on in order to give their signals to the engineer?

On the south side.

Is that side nearest or away from the Jackson & Eastern?

It is on the opposite side of the train from the Jackson & Eastern.

So that part of the train crew would have to be on the side of the A. & V. away from the Jackson & Eastern?

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A. Yes, sir, away from the engineer.

Q. Now, then, suppose that same thing happened on the J. & E. Under these circumstances if a member of the train crew at the rear end of the train wanted to signal the engineer what side of the J. & E. would they have to be on, towards the A. & V. or away from the A. & V.?

A. On the north side, the side away from the A. & V. but on the engineer's side.

Q. Mr. Jones, please explain the objection to that method of operating which you have just explained to the Court?

A. The objection is that the crew would get only a partial understanding of the situation, and their vision would be obscured in each case.

Q. By each case you mean?

A. The case of the A. & V. they wouldn't know the situation of the J. & E. and the Jackson & Eastern would have no knowledge of the A. & V.

Q. Is that objectionable?

A. Very objectionable, of course. For the trainmen to have their vision obscured would increase the danger of the operations.
[fol. 189] Q. You think the danger would be increased?

A. There has been no suggestion to me, nor to our people so far as I can obtain after diligent inquiry, of the location of any proposed interchange track. The purpose of the bill is to exchange on our main line.

A. It is dangerous as it is and I object to it as a junction point for that reason.

Q. From the point of view that those two roads approach this point on curves what have you to say?

Mr. Stone: We move to exclude his construction of the bill.

The Court: I sustain the objections.

Q. Suppose the interchange tracks be built there, how would you consider that?

A. It would be impossible to have the connection there such as an interchange track. If it was parallel to the A. & V. it would make a curve and if it were parallel to the J. & E. it would be on a curve, and if it were to come out at an angle to both it couldn't connect the main line of the A. & V. Frankly, I am at a loss to see how such an interchange track could be located at that point.

A. Tell me now whether the A. & V. Railway Company's track at that point is at grade or above grade or below grade?

A. The track of the A. & V. at that point of junction is about 9 feet above grade on a fill. That grade varies as the track reaches the concrete highway toward the trestle on one side or on the east side. I don't know in feet how far it varies, in round figures from 8 to 12 feet, an average of 10 feet.

Mr. Stone: We object to that.

[fol. 190] Q. Please state whether or not it is a fact that the proposed point of intersection as at a place where the A. & V. track is on a fill or embankment, please state whether that is objectionable or unobjectionable from a railroad point of view and why?

A. Manifestly the very location of a point where trains must start and stop, but where it would be impossible for the train crew to receive their signals would be objectionable. If the stopping of the train is confined to a narrow bank, near a trestle on each side where in the case of a long train part of it would be on the trestle. There would be every additional burden to operating the train.

Q. State now what you have to say about the fill?

A. On either side of Curran's Crossing out a short distance at least freight trains, they would be along a trestle.

Q. Will you mark these trestles with a red "A" and a red "B" on the map?

A. I have marked the trestle east of Curran's Crossing as "A" and the trestle at Farish Bridge as "B."

Q. Please state whether or not this proposed intersection at this point would have any effect on the drainage?

Mr. Stone: We would like for him to qualify as a drainage expert if he is going to be examined along this line.

Q. All right, Mr. Jones, how long did you say you had been connected with the Alabama & Vicksburg Railway Company?

A. Since January, 1884.

Q. How long have you been connected with the Company in an executive capacity?

[fol. 191] A. As Vice President from August 1, 1907 to February 1, 1915, and as President & General Manager from February 1, 1915, to date.

Q. During that period have you had occasion to consider the drainage problems of the Alabama & Vicksburg Railway Company?

Mr. Stone: We object.

Mr. Monroe: I am showing his practical experience.

The Court: I overrule the objections.

Mr. Stone: We except to the ruling of the Court.

A. We have had drainage problems confronting the A. & V. almost constantly. The A. & V. crosses a great many streams, and we have done a great deal to protect the road from high water, and a part of it has been in Pearl River bottom. The technical construction work has not been done under my supervision at all. But its affect has been directly within my knowledge.

Q. Well, what about your experience?

A. You can hardly separate the two, the study of the cause and the effect, while I had a knowledge of it, I was not the man to decide how the bank should be built, or how the floods should be taken care of. I know, of course, if the water there is confined to a narrower area it will raise the water.

Q. What I am asking you is what the effect is going to be on the drainage of putting an embankment for the J. & E. on the line indicated on the map "F"?

A. The answer to that seems to be so plain that there can be but one conclusion, the water that goes down Pearl River when it overflows the bank spreads over the entire bottom back for a distance of two or three miles must of necessity be restricted by the building of the bank.

[fol. 192] Mr. Neville: We object to the witness making any argument.

The Court: Let him state the fact. I sustain the objection.

Q. Whenever you refer to the building of the bank, what bank do you refer to?

A. I refer to the building of the bank for the Jackson & Eastern there in Pearl River bottom.

Q. Indicate by a letter "J" and letter "K" at the other end, the proposed line of the Jackson & Eastern on the map Exhibit "F." You already have the "J" there so just put the "K" at the other end?

A. I have done so.

Q. Now, please state what your knowledge is as a practical railroad man what is going to be the effect of that embankment there?

Mr. Stone: We object, as he has stated that he is an executive handling the finances of the railroad.

The Court: I will admit the testimony.

Mr. Stone: We except to the ruling of the Court.

A. I would say that the building of the embankment on the location of the Jackson & Eastern at the comparatively short distance from the River that it would restrict the area of the water, and would increase the height of the water and the volume of the water which would be thrown along this track.

Q. What have you to say in regard to the danger resulting from the construction to the Alabama & Vicksburg Railroad track?

A. Every additional foot of water increases the danger.

Q. Do you know from your personal knowledge and observation anything concerning the behavior of Pearl River, the habits of Pearl River?

A. I know that Pearl River in dry weather is a very small stream. [fol. 193] It carries a substantial amount of water as a result of heavy rains such as we are confronted with in the springs. It is a fact that it does overflow its banks and the water extends some distance out into the country.

Q. How frequently does it overflow according to your observation?

A. I couldn't say.

Q. Once or twice a year?

Mr. Stone: We object, he said he couldn't state.

The Court: I sustain the objections.

Q. Mr. Jones, tell us what you know about the habits and movements of Pearl River?

A. I would say that in connection with all Mississippi streams it is usually in the fall and in the spring time that they overflow, but there are excessive rains at other periods.

Q. Where is the proposed point of junction with reference to the grade crossing known as Curran's Crossing?

A. It is practically at the crossing.

Q. Will you indicate that with a small red "c" on the map "F", Curran's Crossing?

A. With a red what?

Q. "C".

A. I have done so.

Q. What have you to say from the point of view of the proximity of Curran's Crossing to the proposed point of junction as to whether that would be objectionable or unobjectionable?

A. Curran's Crossing is already a dangerous crossing, and the junction would be dangerous, and the junction would be on a curve, [fol. 194] which is dangerous. We have already experienced difficulties with this crossing. Curran's Crossing, as is well known, carries highway traffic from Jackson which goes over the concrete road and turns south over the A. & V. whether it goes east to Pearson or south to the territory south of there. That traffic is quite substantial.

Q. In view of what you have stated concerning the conditions which would arise in case that point of junction were established, please state to the Court whether or not in your opinion that point is a proper or improper point of junction?

Mr. Neville: We object to that.

The Court: Let him answer.

Witness: I have no hesitancy in saying that it is a dangerous point of connection.

Q. I believe you said heretofore that you stated to the officials of the Jackson & Eastern that you did not object to a connection at a proper point?

A. I did.

Q. What have you to say as to the adequacy of the facilities of the Alabama & Vicksburg Railroad from Pearson going into Jackson for the purpose of handling its own business?

A. The traffic of the A. & V. Railway has increased very much in the last few years, and it now moves a very substantial amount of traffic. We have four passenger trains in each direction each day, and three freight trains which go regularly, and many more additional trains, work trains with the supplies to keep up the track, ties and rails, and so on. The track between Pearson and Jackson is [fol. 195] a very busy piece of track, and if it being taxed with the business that it now has, if in addition to that there is a junction placed on a curve like the one suggested at Curran's Crossing and our trains will have to go under control instead of the rate they now go, it would necessarily slow their operations. If they change their speed it delays their movement, and, of course, the delay of any train delays the train running in the opposite direction which is seeking to use the same track. Further, if it were a junction point the additional traffic, if we handled the traffic from the Jackson & Eastern would necessarily tax the operations on our road in that section.

Q. From your knowledge of railroad conditions what could you expect in the way of trains from the Jackson & Eastern, daylight or night trains, and why would you expect one or the other?

A. The Jackson & Eastern being a short road necessarily, of course, would prefer to operate in the daylight. If they operated in the daylight they would want to come out of Jackson in the morning, and the daylight period is the business period on the Alabama & Vicksburg Railway.

Q. What proportion of the regularly scheduled trains of the A. & V. handle interstate commerce?

A. All of them.

Q. Do the trains of that road crossing this point of intersection handle United States mail?

A. Practically all the passenger trains handle mail. Four carry postoffice cars.

Q. What, if any, importance is the Alabama & Vicksburg Rail-
[fol. 196] way as an artery in the railroad system?

A. The A. & V. is a Class One Railroad, and forms a line from Southeast Mississippi to Vicksburg on the west of the state and connects with a line to the southwestern part of the country, and so forms a very substantial artery from the southeast to the southwest.

Q. What effect would any such pretended point of junction with the Alabama & Vicksburg Railway have upon interstate commerce?

A. It would interfere with all our trains.

Q. You spoke of the Alabama & Vicksburg Railroad being a Class One Road, what do you mean?

A. Railroads for convenience are classed by the interstate commerce commission.

Q. Will you please state to the Court whether or not the track of the A. & V. Railroad at the point where it is in the condemnation proceedings sought to be condemned essential to interstate commerce and the United States mail?

A. Yes, sir, absolutely. It is one of the essential points in the main track.

Q. Can you give us in terms of dollars the gross revenue of the A. & V. ?

A. Approximately the gross revenues of the Alabama & Vicksburg for the years, 1921, 1922 and 1923—

Q. What was it in 1920?

A. In 1920 it was about \$10,000.00 a day; in 1921, something over \$9,000.00; in 1922 due to the strike, under \$9,000.00 a day; and this year a little over \$7,000.00 a day.

[fol. 197] Q. Per day?

A. Yes, sir.

Q. In case your traffic was suspended for a day what could be the effect on your revenue?

A. It would be very serious. Of course, if it was just for a day it would not be so great, but the result would be that shipments would be re-routed, or routed rather that would otherwise go by

the A. & V. to go by New Orleans or Memphis, and quite a lot of passengers when they knew that our traffic was interrupted would go by other routes.

Q. In the case of the interruption of traffic by washouts on the Pearl River what would be the effect?

A. Of course, the washout would be an expense, and that with the expense of taking care of the public by carrying them over to the other side of the washout and transferring them as quickly as possible—well it could hardly be estimated.

Q. What is the east and west terminals of the A. & V.?

A. Meridian on the east and Vicksburg on the west, at the banks of the Mississippi River.

Q. Has the road any branches?

A. No.

Q. Well, then, explain to the Court again the severance of the main line such as at the Pearl River by a washout?

A. Well, I have just stated. A lot of the traffic would move by other routes, and passengers when it was convenient would go by other routes rather than be delayed by the transfers over this washout.

Q. Are there any mortgage bonds on the property of the A. & V.?

[fol. 198] A. Yes, sir, one.

Q. Who is the trustee?

A. The Canal-Commercial Trust & Savings Bank of New Orleans.

Q. Who personally?

A. Felix Hunter.

Q. What effect—what if any damage done to the property of the Alabama & Vicksburg would be reflected to the bond holders, Mr. Jones?

A. No serious damage to the bond holders, but not in money in sentiment it would be an injury to the company.

Q. Referring to the junction points, at what places on the A. & V. are there junctions?

A. Meridian, Newton, Jackson and Vicksburg.

Q. With what lines are these junctions made?

A. At Meridian with the Mobile & Ohio, Alabama Great Southern, New Orleans & Northeastern, Southern Railway and the Meridian & Memphis.

Q. At Newton?

A. With the Gulf, Mobile & Northern.

Q. At Jackson?

A. There we have a junction with Y. & M. V., and the I. C. We also receive and deliver freight and passengers to the New Orleans Great Northern and the Gulf & Ship Island.

Q. At Vicksburg?

A. We have a junction point with the Y. & M. V.

Q. In any one of the instances, does the main line of the junior railroad ever but- right into the main line of the A. & V. as in- [fol. 199] dicated on the blue print of the proposed condemnation proceedings of the Jackson & Eastern, Mr. Jones?

A. No. At Meridian the main line of the New Orleans & Northeastern and the main line of the A. & V. Railway connect in the Meridian Yard where trains are operated under full control.

Q. This is inside the yard?

A. Yes, sir. The same is true with the A. & V. and the Alabama Great Southern.

Q. How is it at Newton with the Gulf Mobile & Northern?

A. We have a direct crossing with the Gulf Mobile & Northern but the exchange connections are made with exchange tracks, one of which touch the side tracks of the G. M. & N. and the other the side track of the Alabama & Vicksburg.

Q. At Jackson?

A. The connection is inside the passenger depot grounds.

Q. At Vicksburg?

A. The connection is through side tracks. In fact, so far as I know that is the uniform custom with reference to making interchange unless it is in yards or at terminals.

Q. You say side tracks and not through main tracks?

A. Yes.

Q. Why are direct connections avoided in this way?

A. For the reason, there may be many reasons but two reasons stand out very clear. In the first place it would be extremely dangerous for the trains of one railroad to enter the track of another railroad. And in the second place, to interchange cars at a point as the proposed Jackson & Eastern at Curran's Crossing, to deliver [fol. 200] their cars on the main track of the Alabama & Vicksburg it would be extremely damaging in cost and it would subject the main line trains of the A. & V. to extreme danger. To leave cars on their railroad the engine of the A. & V. would have to go on their track, main track, which would put the employees too far from the train, aside from the question of delay.

Q. Explain that more fully, Mr. Jones?

A. Under the law a railroad is not permitted to deliver or receive cars which are defective—

Mr. Stone: We object to him testifying as to any law.

The Court: I sustain the objections. Just state the facts.

Witness: Railroads are not permitted to exchange defective cars, cars which are defective, therefore, if cars are tendered in exchange, a line of cars are tendered for exchange and one of the cars is rejected it is set back on the exchange track, the interchange track. If I may explain the interchange track usually provided between railroads is so arranged as a side track that at one end of the track it connects with the side track of the main track of the one road and the other end with another road, and the road which delivers the cars places them on the interchange track by using its track and switch connections and the other road after inspecting it, if accepted, to be received at the other end of the interchange track by using its track.

Q. Will you explain more fully?

A. When freight is delivered from the I. C. to the A. & V. at Jackson——

Q. Just wait right there a minute. The petition for the con-[fol. 201] demnation proceedings recites that the Jackson & Eastern track at a proposed point of intersection is at a distance of some feet from the main line of the A. & V.? What have you to say on that subject?

A. Of course, it would be undesirable to set out cars from the A. & V. on that track. You see that bad order cars might be rejected, that would mean that cars might be delivered to the Jackson & Eastern and left there on that grade.

Q. Can you give us a complete record of the total investment in the Alabama & Vicksburg?

A. In giving that answer I will have to make some explanation. The balance sheet of the bank shows the investment to be \$6,816,-371.00. The accounts of the Alabama & Vicksburg Railroad were kept in accordance with good practice during the period when the practice was determined by the railroads, and in accordance with the Interstate Commerce Commission since. But the valuation as shown by the interstate commerce commission is \$3,816,000.00.

Q. Do you know of any reason why the Jackson & Eastern line shouldn't bridge itself into Jackson, Mississippi? The G. & S. I. and the A. & V. built their bridges?

Mr. Stone: We object.

The Court: I sustain the objection.

Witness: I know of no reason.

Cross-examination by Mr. Stone, for the defendant:

Q. I understood you to say that you looked after the finances of the A. & V. You are not a member of any operating crew of the railroad?

[fol. 202] A. I did not say that. I am president and general manager of the railroad. I am familiar with the practical operations of the railroad.

Q. I didn't ask you that. I asked you if you looked after the operation of the railroad?

A. Mr. Ford handles that end of it.

Q. How long has that been true?

A. Since 1915 I have been president, prior to that time I was vice-president and in charge of the operations.

Q. Mr. Jones, you are not an engineer?

A. Civil engineer, no.

Q. Did you ever have any practical experience in the operations of trains?

A. No.

Q. Did you ever have any practical experience in the handling of switching, looking after the switches?

A. No, I think it is proper to say that I have seen the results reflected in proper and improper methods.

Q. Mr. Jones, reverting again to the drainage proposition. The fact is that the Jackson and Meridian Public Highway, which is concrete at this point, lies between the Jackson & Eastern Railroad and the river, does it not?

A. Yes.

Q. It is also——

A. I believe it crosses some distance out.

Q. But before the Meridian and Jackson Public Road crosses the Jackson & Eastern Railroad the Fannin Public Road which is a concrete or gravel highway, turns off to the north from the Jackson [fol. 203] and Meridian Public Highway and runs between the Jackson & Eastern and the River?

A. That's true.

Q. Then there is in the territory referred to in your bill a concrete public highway lying between the Jackson & Eastern Railroad and this other highway, there is no dispute about that?

A. That's true.

Q. How high is the concrete highway?

A. I don't know. I think we have witnesses that can tell you.

Q. I am asking you?

A. I do not know. I know it is lower than the Alabama & Vicksburg Railroad at the point of junction.

Q. Necessarily the tracks will have to come together?

A. At the point of junction, yes.

Q. You don't know how high that road is, the public highway?

A. No, sir.

Q. Do you know how many openings the Meridian and Jackson Public Highway has? How many conduits permitting the water to pass from the north side of the highway?

A. I do not.

Q. Do you know how many openings, culverts or conduits in the other public highway lying north from the Meridian & Jackson Highway?

A. I do not.

Q. You don't know?

A. No.

Q. How long have these public roads been located there?

A. I do not know how long the highways have been there. They [fol. 204] have been there a good many years as public roads.

Q. I am speaking of them being public highways?

A. I don't know when this concrete work was done on them.

Q. It was done prior to the time that this application for eminent domain was made?

A. I think so, I do not know if it was completed at that time.

Q. And prior to the time that this bill for injunction was filed?

A. Same answer.

Q. You said that you did not know what openings were left for water passages from the north to the south in the public highways, do you know what openings are left in the Jackson & Eastern Railroad for the water to pass out?

A. It is practically all openings now, it is partly filled.

Q. I have reference to the road plans?

A. I do not know. However, the effect of the building of the concrete road at its present height, notwithstanding the openings that are there, it has thrown more water against the track of the Alabama & Vicksburg Railway than otherwise came down against it, and the increased height of the Jackson & Eastern track would throw additional water.

Q. If the dump of the Jackson & Eastern is built as a trestle what will be the effect?

A. If it is a trestle it will certainly throw more water against our track.

Q. Is that your argument, you know it will throw more water against the track of the A. & V.?

A. I know that to be a fact. Just the trestle will divert the water towards our track.

[fol. 205] Q. I am not asking you to argue the question. Have you been there in high water and seen it?

A. I have seen the water and I know what effect your dump will have on our railroad.

Q. You have seen it?

A. Yes, sir.

Q. How much water was there?

A. I couldn't say. It was considerably over the A. & V.

Q. Mr. Jones, of your own knowledge do you know whether or not the waters of Pearl River have been high enough to overflow the concrete public highway leading from Jackson towards Meridian?

A. Not of my own knowledge, but I have heard and have information that it has.

Q. I am asking you if you know of your own personal knowledge whether the waters have ever been high enough to overflow the road leading from Jackson to Meridian, known as the Meridian and Jackson Highway?

A. Do you mean if I was there when the fall came down?

Q. I am asking you of your own knowledge?

A. I know from the figures that I get on the water fall——

Q. I am asking you of your own knowledge?

A. I don't know.

Q. Mr. Jones, you said that a switching connection on a curve is bad?

A. I didn't say a switching connection. I said an interchange. A junction between two railroads.

Q. Suppose this junction you speak of as a junction may be simply for an exchange of cars, switching connection, then would [fol. 206] you say it was dangerous?

A. If made at that point, yes, sir.

Q. Because of the curve, the curve itself?

A. Because of the degree of the curve and——

Q. Just confine it to the curve?

Mr. Monroe: And what Mr. Jones?

Mr. Stone: Mr. Monroe, I am examining this witness.

The Court: Let the witness finish his answer.

Witness: The connection at that point would be dangerous for a switching connection because of the curve and because——

Q. I am asking you now as to the curve, and not asking you as to any other reasons. You will be allowed to give your other reasons. How many switch connection- have you *been* Jackson and Meridian?

A. I don't know how many.

Q. How many on the outside of a curve, like this, with that degree of curvature?

A. I don't know.

Q. Isn't there one at Chunky on the outside of a curve?

A. That is not the same though.

Q. I am asking you if there is one at Chunky?

A. There may be, but that would be at a station.

Q. All right. How about Pearson, isn't there one on the outside of a curve at Pearson?

A. I don't know.

Q. West of Pearson?

A. I don't know.

[fol. 207] Q. Isn't the curve stiffer at Pearson than the curve at Curran's Crossing?

A. I don't know.

Q. You don't know?

A. I do not.

Q. You know where Greenfield is, don't you?

A. Yes, sir.

Q. You know there is a switch located at Ricehill?

A. I couldn't testify as to that.

Q. That is on a curve?

A. I don't know.

Q. You don't know about that?

A. No.

Q. You don't know how many switch connection- you have on the outside of a curve between Vicksburg and Meridian?

A. No.

Mr. Monroe: I want to interpose an objection to this line of question as being irrelevant and having no bearing on the case. That these are mere switching connections, said switching connections have nothing to do with this question.

The Court: I don't see the connection, but I will hear you on it.

By Mr. Stone:

Q. Mr. Jones, if this connection here is to be simply a switch connection for the exchange of cars between the Jackson & Eastern and the Alabama & Vicksburg Railroad, if this is simply a switch con-

nection, then your statement about the danger because of the curve would be modified?

A. No, it would not.

[fol. 208] Q. Then your statement is that switching on a curve is dangerous?

A. No, I say there is an element of danger, when there is no such element at a station. The danger would be where they approach it at a high rate of speed.

Q. Mr. Jones, the element of danger there at Curran's Crossing that you have referred to, occurs from the speed that the trains run? Isn't that true?

A. In a considerable measure, yes.

Q. Isn't it a fact, that just across the river that your trains slow down to five miles?

A. That may be done, it is done when the water is high.

Q. And isn't it a fact that the accidents that have happened at Curran's Crossing were the result of the tremendous and *wreckless* rate of speed that the trains were moving?

A. It is not a fact.

Q. When you leave Jackson coming this way before you get to the River there is a sharp curve in your track?

A. Yes, sir.

Q. Which curve is even sharper than the one at Curran's Crossing, isn't it?

A. I will have to refer to the document to say.

Q. We won't give you time to get it up. Look at Exhibit "F" and see if it don't give the degree of the curve.

Judge Thompson: I can tell you, it is a 12 degree curve.

Mr. Stone:

Q. What is the degree?

A. I don't know what the degree is.

Q. Well, suppose the degree there is 12 degrees, then it is greater [fol. 209] than the one at Curran's Crossing?

A. And the speed there is very much less than at Curran's Crossing.

Q. You pass over this stiff curve leaving Jackson coming East?

A. Yes, sir.

Q. And you come to the river bridge?

A. Yes, sir.

Q. Then you reach a trestle?

A. Yes, sir.

Q. Then you come to the public crossing known as Curran's Crossing?

A. Yes, sir.

Q. If there was a switch connection over there wouldn't the trains necessarily slow down?

A. To switch?

Q. And if they slowed down it would reduce the accident, how would it interfere with the efficiency of the road?

A. It would lengthen the time between Jackson and Pearson.

Q. A switch connection would interfere with the traffic?

A. It would certainly take more time if the trains were running at a reduced speed.

Q. Now, you spoke in your testimony about a connection down at Pearson?

A. Yes, sir.

Q. Will you show on this map where Pearson is?

A. Yes, it is here on the map (Ind.).

Q. It is higher on the map than Curran's Crossing?

A. Yes, sir.

[fol. 210] Q. Do you know how far it is from Curran's Crossing?

A. Between three and four miles.

Q. The Jackson & Eastern is making its way towards Jackson and Jackson is over here? (Ind.).

A. Yes.

Q. If the Jackson & Eastern went down to the connection you spoke of it would leave Jackson and come four miles towards Meridian? Here it is on the map?

A. I wouldn't say it would be necessary for them to come to this point, follow the river to this point and go then back there, it could come down further east.

Q. It would have to abandon its right of way and get a new right of way to do that?

A. I don't think it would have to abandon all of its right of way. It would have to abandon part of it, but I don't know how much.

Q. The point at Pearson is four miles back towards Meridian away from Jackson—away from Curran's Crossing?

A. Yes, sir.

Q. You said that there was no plans suggested for an interchange track. Did you ever have any practical experience with interchange tracks?

A. No.

Q. Or make up plans for the building of interchange tracks?

A. All of our plans for interchange tracks are submitted to me before they are built.

Q. I said make them up?

A. I don't make them up.

[fol. 211] Q. You simply pass on them?

A. Yes.

Q. Do you know what kind of track the Jackson & Eastern have made for their yard switch?

A. No.

Q. Do you know what the connection is so far as switching is concerned, between the A. & V. and the M. & M. is at Meridian?

A. There is an interchange down in the south end of the yard.

Q. How many switch tracks have they got there for the breaking up of their trains?

A. The A. & V.?

Q. Yes?

. I think the connection is just at a point where the track
 ches off.

. The Meridian & Memphis goes into your main line?

. It is in the yard if it does.

. It does come into your main line?

. I don't know. If it does it is in the yard limits.

. Does it affect your block signals?

. Our block signal is beyond that point.

. How far beyond that point?

. I don't know.

. Mr. Jones, you said awhile ago that this point of junction was
 fill, and being on a fill was necessarily more dangerous?

. Yes.

. You didn't consider the increased danger when you required
 Meridian & Memphis to build their line across your railroad?

. We required an adequate bridge to avoid the danger, the
 212] danger of crossing our track.

. When this track was proposed to be built into Meridian across
 track wasn't there an injunction just like this one?

. I think it was in court.

. Wasn't there an injunction just like this one?

. I don't know.

. And wasn't the case appealed, and then it was that you pro-
 d to build your switch track right on out there?

r. Monroe: We object, the record speaks for itself.

. Isn't that a fact?

. The yard had not been built.

r. Monroe: We object.

ne Court: I sustain the objection.

By Mr. Stone:

. Do your trains or not slow down on curves, your fast trains,
 curves like the points at Pearson?

. I can't tell you, I don't know the speed of the trains at that

. If you don't know the speed how do you know this junction
 interfere with the traffic?

. Well——

. If there is a switch connection on this curve do you know
 her or not it will interfere with the fast trains running by there?

. That is a very dangerous point and will interfere with the
 d of the trains.

. I am not asking you about this point. Do you know, as a
 er of fact, whether the trains are slowed down in passing the
 213] switch at Pearson?

. No, I don't know.

. Mr. Jones, the Alabama & Vicksburg Railroad has been fight-
 onstantly the Jackson & Eastern going into Jackson at all?

Mr. Monroe: We object to the question.

The Court: I sustain the objection.

Witness: I have no objection to answering it. I wrote and told him that I had no objections to him making a connection with our line at a proper point.

The Court: I sustained the objection.

By Mr. Stone:

Q. You said in your testimony that between Pearson and Jackson that your traffic has been constantly increasing for a few years?

A. I didn't just limit that to the district between Pearson and Jackson. That is a fact on the entire road.

Q. And any connection, any switch connection on your road where you would have to stop and take on more traffic would interfere with the operations of your trains?

A. With the speed of the trains.

Q. With the operations of the trains?

A. The speed would have to be reduced.

Q. That would be true of a switch connection anywhere between here and Vicksburg?

A. Yes, sir.

Q. You testified at length about the damage that would occur if your traffic was interrupted by a washout of the bridge. Of course, all these damages that you were talking about were predicated upon [fol. 214] a washout at Pearl River?

A. To any washout. The damage due to the actual washout and the damage due to the interruption of traffic.

Q. That part of the testimony in which you refer to damages would not be realized if there was no washout?

A. If there was no washout.

Q. Mr. Jones, you are familiar with the rule for the operations of trains, are you not?

A. Reasonably so, yes, sir.

Q. There is a rule that on a level or a curve that the fireman must be on the lookout for signals, is there not?

A. I know of no such rule.

Q. Isn't there a rule that the fireman must be on the lookout for signals when making curves?

A. I think so.

Q. Suppose the engineer comes to a curve and can't see anything ahead, don't you know the rule is for the fireman to assume the lookout on the inside of the curve?

A. I know of no such rule. We have a rule requiring the fireman when not actually engaged in firing the engine to watch out for signals.

Mr. Monroe: This is not cross-examination.

The Court: He has a right to examine the witness along this line.

By Mr. Stone:

Q. Have you one of your rule books here?

A. I have not.

Q. Mr. Jones, you can get one, can't you?

l. 215] A. I guess so. I dare say I can.

Q. There are plenty of them in the possession of your employees?

A. There should be.

Q. Will you get one of them?

A. I will endeavor to do so.

Q. If the fireman were sitting up on his side of the train when entered this curve, and if the engineer was on his side and his vision was cut off then the fireman on his side of the engine would have a perfect vision from the inside of the curve?

A. Provided there were no obstructions.

Q. Then coming the other way the engineer would be on the inside of the curve and he would have perfect vision?

A. Under the same conditions.

Q. You referred in your testimony to the fact that it would be exceedingly dangerous for the Jackson & Eastern to run their trains on the track of the A. & V. Suppose this application for eminent domain provides for a lock switch there at the A. & V. right of way and a de-rail lock so the Jackson & Eastern couldn't enter the track of the Alabama & Vicksburg, then that danger would be done away with?

A. No, because there are many provisions made at de-rail switches that are not carried out.

Q. So far as that is concerned there is danger in the operation of trains anyway?

A. There is an element of danger, yes.

Q. Every time you build a switch connection or a side track on any road there is an additional element of danger in the operations of the trains, that's true?

l. 216] A. It is possible to reduce the danger to such an extent that it is negligible?

Q. Every time two railroads cross there is an element of danger?

A. Yes, sir, depending on the construction.

Q. And whenever you switch cars across crossing there is an added danger?

A. Yes, sir.

Q. With all that being true, isn't it a fact, that right here in Meridian on 22nd Avenue, the main crossing from this side of town to the south, that you break up your trains and switch cars across 22nd Avenue crossing?

Mr. Monroe: We object, as this has nothing to do with the connection in question.

The Court: He is on cross examination, so I will overrule your objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Isn't it a fact that you break up your cars and switch your engines across 22nd Avenue?

A. That is not done by us. That is done by the terminal company under the direction of the Southern Railway Company.

Q. Well, that is done?

A. I don't know.

Q. Take your switch track at Newton. Does not your switch track extend across the Gulf, Mobile & Northern track?

A. I think not.

Q. Don't the trains in making the switch have to extend clear [fol. 217] across the G., M. & N. track at Newton?

A. In making the switch to the G., M. & N.?

Q. Yes?

A. No.

Q. In your own yard?

A. I think probably they do do that, or go to that point, but it is protected by a block signal.

Q. The switching in Newton is done right across the public road leading south?

A. Yes.

Q. Of course, there is an element of danger in that?

A. Certainly.

Q. Suppose coming up to this de-rail we are talking about—suppose that with the lock switch and the lock provided therefor, under the control, absolutely of the A. & V., the lock carried by the A. & V. and not in the possession of the Jackson & Eastern, at all, would it do away with the element of danger?

Mr. Monroe: We object, that is not the facts.

The Court: I sustain the objection.

Q. You spoke of the increase of your traffic on your line in the last few years. It may be that I misunderstood your figures. I understood from your figures running back for the last few years, the largest amount of traffic was four years ago?

A. Last year the strike interfered very seriously with the revenue of our road. But the receipts show that our traffic has increased for the last few years.

I didn't understand that. It was my misunderstanding of your figure.

(Witness excused.)

[fol. 218] Thursday, August 9, 1923—nine o'clock, a. m.

L. E. EVANS, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. You are L. E. Evans?

A. Yes, sir.

Q. What is your residence and occupation?

A. My residence is Meridian, Mississippi, 3125 8th Street, and I am a passenger train conductor on the Alabama & Vicksburg Railway.

Q. What is your run on the A. & V.?

A. I run on the local passenger trains, trains Three and Four and Five and Six.

Q. Between what points do you run?

A. Meridian and Vicksburg.

Q. How long have you been connected with the Alabama & Vicksburg Railway?

A. Nearly 22 years.

Q. How long have you been a passenger conductor on the Alabama & Vicksburg Railway?

A. I have been a passenger conductor for 14 years.

Q. Previous to that time how were you employed?

A. I was employed in the construction service on work trains, and a short time on freight trains, in the freight service before getting on the passenger trains.

Q. That is, you were a conductor on work trains, then a conductor on a freight train and now you are a passenger conductor?

[fol. 219] A. Yes, sir.

Q. And you have been a passenger conductor how long?

A. For 14 years the 9th day of this past June.

Q. Are you familiar with this proposed point of intersection which is at a point marked "J" on this Exhibit "F", which is just on the east of the Farish Bridge, between Farish Bridge and the next trestle on the A. & V. road?

A. I am familiar with it, yes, sir.

Q. Tell the Court about how many times a month your duties take you past that point?

A. If I work regularly, 34 times a month.

Q. You have been passing that point approximately 34 times a month for some period of time?

A. Yes, sir.

Q. Are the trains which you operate on over that point engaged in interstate commerce?

A. Yes, sir.

Q. Do they carry interstate passengers?

A. Yes, sir.

Q. What about United States mail?

A. They handle that, also express.

Q. Have you made any particular note of this proposed point of junction, and given it any thought?

A. Any thought to that proposed point of junction?

Q. Yes?

A. I have, yes, sir.

Q. Is the proposed point of junction on a piece of straight track [fol. 220] of the Alabama & Vicksburg Railway or is it on a curve?

A. It is on a curve.

Q. Will you please state to the Court from the point of view of an operating conductor with 22 years of experience in the service whether the fact that the proposed point of junction is on a curve presents any difficulties or objections to it as a proposed point of junction?

A. Yes, sir, it is a great objection.

Q. Explain to the Judge just why that is?

A. The reason, Mr. Monroe, is that this is on a curve and on a fill, and it makes it dangerous to operate trains by there, and even more so than it would be if it was on a level and straight piece of track. A point of intersection of that kind necessitates more or less switching and my experience is that at a crossing like this one causes many difficulties and objections. At a place of this kind it is really impractical to do switching at all for the reason the engineer can't see the signals. To give the signals the trainmen would have to go on the opposite of the train from where their work was, the switching was being done, and the fact that it is on a fill would be an additional objection.

Q. Refresh yourself. I want you to make yourself clear by making your illustrations on this map, please, Mr. Evans. Let us suppose you are coming with an A. & V. train coming from the east towards Pearl River, on what side of the train is the engineer?

A. On the north side of the train.

Q. The side towards the Jackson & Eastern Railroad?

A. Yes, sir.

Q. If there is any switching to be done on what side of the A. & [fol. 221] V. train will the work be on?

A. On the north side.

Q. That is the side towards the Jackson & Eastern?

A. Yes, sir.

Q. If that engineer on that train undertakes to look back over his train towards the rear to get signals from his crew on the north side of the train, could he see the crew?

A. No, sir.

Q. Why not?

A. Because of the curve; the distance they were in the curve. I will explain this. If the crew was on the bank back there in the curve he couldn't see at all, and if they got down in the level he couldn't see them from that point.

Q. If the crew were on the embankment at the back around the curve the engineer couldn't see?

A. No, sir.

Mr. Stone: We object to him leading the witness.

The Court: Don't lead him.

Q. Suppose, Mr. Evans, that the crew to give their signals came on the south side of the train, the other side of the train, explain to the Judge what objections there would be from the crews point of view from giving signals from the south side of the train?

A. To go away to the south side of the train, Mr. Monroe, they couldn't do their work in the yard.

Q. What have you to say about the crew giving their signals from the south side of the train to the fireman and the fireman [fol. 222] passing the signals on to the engineer?

A. The crew would be entirely away from their work when they were on the south side signalling the fireman.

Q. Do I understand you to say that the crew from up on the north side couldn't be seen by the engineer?

A. Yes.

Q. And if they were on the south side where they could signal the fireman they would be away from their work?

A. Yes, sir.

Q. Is that a condition favorable to good railroading?

A. Absolutely no, it is not.

Q. How objectionable is that, Mr. Evans?

A. It is the most objectionable feature in railroading.

Q. It is objectionable?

A. If you are going to place a man away from his work to pass his signals there is no way for him to get back to do his work.

Q. Have you any position, Mr. Evans, in connection with the Railway Conductors?

A. Yes, sir.

Q. What is it?

A. I am General Chairman for the Conductors. I am a member of several lodges.

Q. Do you feel that you are speaking for your organization in voicing your objections to this point of connection?

Mr. Stone: We object to that. Let him state the fact, and it is for the Court to say whether it is dangerous or not.

The Court: I sustain the objections.

[fol. 223] By Mr. Monroe:

Q. Now, Mr. Evans, from your experience as a conductor for these many years, do you know anything about the elevations of the rails of your tracks as they go around a curve?

A. Yes, sir, the curves have an elevation according to the degree of the curve. Of course, the greater the degree the greater the elevation.

Q. Which rail is it that is elevated?

A. It is the outside rail of the curve.

Q. Have you had any experience in operation of trains when the outside rail of the curve was not elevated?

A. Yes, sir.

Q. What happened as a result of this?

A. Derailment.

Q. Would you say from your experience that the failure to elevate the outside rail on a curve was or was not dangerous?

A. It is dangerous.

Q. Then, Mr. Evans, in the present instance what rail of the A. & V. would be elevated in order to comply with safe railroading.

the one towards the Jackson & Eastern or the rail away from the Jackson & Eastern?

A. The north rail, the one towards the Jackson & Eastern proposed connection.

Q. What rail of the Jackson & Eastern would be elevated, the one nearest the A. & V. or the one away from the A. & V.?

A. Their south rail, the one next to the A. & V.

Q. As these two tracks approached the elevated rail of one would [fol. 224] be next to the elevated rail of the other?

A. Yes, sir.

Q. Suppose that elevation were eliminated, can you tell the Court from your experience as a conductor whether that would or would not make that a dangerous point?

A. It would make it impractical on account of derailments.

Q. Is this proposed point of junction on a level piece of ground or is the Alabama & Vicksburg Railroad track on a fill?

A. It is on a fill.

Q. Approximately how much of a fill?

A. I don't know. But it is somewhere along from 8 to 10 feet.

Q. From your experience as a railroad conductor for these many years state whether or not that presents any objectionable feature for the purpose of a junction, it being on a fill?

A. For a connection, yes.

Q. You referred to that in your testimony about a curve, but I would like for you to state again why a connection on a fill is objectionable?

A. There would be about the same objections to doing the work and things of that kind as I explained awhile ago.

Q. Can you tell us whether or not there would be any trestle on the A. & V. Railroad close to this proposed point of junction?

A. There is one east of it there, pretty close, and there is one west of it at Farish Bridge.

Q. The point of junction is between two trestles?

A. Yes, sir.

Q. Look on this map and tell me if these two trestles to which you refer are indicated there by the points A. & B.?

[fol. 225] A. I know they are there, yes, sir.

Q. You are now referring to the map, Exhibit "F"?

A. Yes, sir.

Q. And you refer to the trestle at the point "A" and the trestle at the point "B"?

A. Yes, sir.

Q. The trestle at the point "B" is called Farish Bridge?

A. Yes, sir, against the road bridge.

Q. This proposed junction is that at the point "J"?

A. Yes, sir.

Q. I wish you would tell the Court whether that is an objection to this as a point of junction, it being between these two trestles?

A. A serious objection.

Q. Why?

A. The same thing as I gave about doing the work and things of that kind. Mr. Monroe, the road crossing, known as Curran's Crossing and you will necessarily have to consider that, and you can't walk through your train to get to this junction and you can't walk over this trestle.

Q. I want you to make that perfectly clear. Suppose, Mr. Evans, you come up to that junction point on your train from the east, You are on the back end of the train, you are the conductor, what do you do?

A. I have to climb over the train to get down to the register station.

Q. Would that necessitate you walking across the trestle?

[fol. 226] A. I couldn't walk across the trestle with the train on it.

Q. What would you have to do?

A. I would have to crawl over the train or go down in the woods and go around the train.

Q. On a passenger train you would walk through the train?

A. Yes, sir.

Q. But on freight trains?

A. Walk over the trains or as I said go down in the woods and walk back the length of the trains.

Q. From your experience as a conductor, as a member of an operating crew of a train, would you say that would present a serious objection to this point of connection?

A. The men whom I represent——

Mr. Stone: We object to that.

The Court: He can state what they said to him.

Mr. Monroe:

Q. Go ahead.

A. The men whom I represent, the train men and the conductors have come to me and said this to me.

Mr. Stone: We object to what they said.

A. They complained of this place.

Mr. Stone: We object to that.

The Court: I think he can state if they made any complaints.

Mr. Stone: We except to the ruling of the Court.

A. We conductors consider the place absolutely a death trap.

Mr. Stone: We move to exclude that statement or any statement including what other trainmen said.

The Court: He can state what his opinion of it is.

[fol. 227] Mr. Monroe:

Q. State what your opinion is in regard to this being a dangerous point for a connection?

A. My opinion is that it is a death trap for the men employed to do the work there.

Q. Is it or is it not a fact that you have received numerous complaints from train crews operating along this proposed point of junction on the ground that it is dangerous?

Mr. Stone: We object to what other men have said, and we further object to the question as being leading.

The Court: I sustain the objections as to the question being leading, but I think he has a right to answer the question.

Q. Mr. Evans, please state whether or not you have received any complaints of this proposed point of junction from the men operating trains along there?

A. Yes, sir. From practically every man we have got.

Q. Has made complaints?

A. Yes, sir. They have made this complaint, that there ought to be something done about having a connection with any railroad at a place of this kind.

Mr. Stone: We make our same objection to this question and answer.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Q. What is there that makes it dangerous?

A. It is dangerous to the men working there—well, we consider it a death trap—and they said further to me, that anything they could do would be done to help prevent this junction.

[fol. 228] Mr. Stone: We move to exclude the statement of the witness. It is purely hearsay.

The Court: I don't regard that as hearsay testimony, Mr. Stone, and I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Evans, you made a statement a moment ago in regard to this proposed point of junction being close to a highway crossing. What is that crossing?

A. The name of it?

Q. Yes?

A. It is known as the Curran Crossing.

Q. That crossing is designated on the map "F"?

A. Yes, sir.

Q. Will you please state to the Court whether or not, from your experience as a conductor for 22 years, that presents any objection to the proposed point of junction?

A. You mean the road crossing?

Q. Yes, sir?

A. It is an objection.

Q. Why?

A. Well, this road crossing is a very dangerous point anyway, and the increased traffic will make it more dangerous. The more work they have to do the more delay there will be to the trains, and it will be necessary to take care of the crossing and that will necessarily cause a great deal of delay for the trains that do the work there.

[fol. 229] Q. Will you please state to the Court what the practice is in regard to cutting crossings?

A. We always cut the crossing before we commence to do the work when the crossings are near by.

Q. So the presence of crossing makes it necessary to do what?

A. If there is any amount of work to be done there the crossing has to be cut to take care of the pedestrians and the automobiles or whatever wants to pass there.

Q. Would that or not add a danger to the place as a place to do switching?

A. Yes, sir.

Q. Why would it add to the difficulties as a place for switching?

A. Because, the crossing would have to be watched, there would have to be a man to watch the crossing and that would take one of your men away from you.

Q. Would it add anything to the time consumed in the handling of the business?

A. Sure it would.

Q. Now, you say that you have been required for sometime to pass this point of intersection, to pass it about 34 times a month, and you say that you have been operating as a conductor for 22 years. During all that time have you been passing that point?

A. Yes, sir.

Q. Have you had occasion to notice the behavior of Pearl River during that period, the waters of Pearl River?

A. Yes, sir, I have seen the River mighty high.

[fol. 230] Q. Tell me what the behavior of Pearl River has been from your experience in regard to overflow, is it subject to overflow?

A. Yes, sir.

Q. Are these overflows frequent or infrequent?

A. Frequent.

Q. Look on this map, this Exhibit "F" and you will see laid out on the map beginning at Farish Bridge and running to the east from Farish Bridge to Brandon a line representing a concrete road. Have you seen Pearl River over the top of that concrete road?

A. Yes, sir.

Q. How long has that concrete road been there?

A. I don't know just how long, but it has been there some time, but I don't know just how long.

Q. About how long has it been there?

A. Several years, I don't remember. About six or seven years.

Q. In the neighborhood of seven years?

A. I think so, but I might be wrong about it.

Q. Have you seen the water over the concrete road since it has been built on more than one occasion?

A. Yes, sir.

Q. When was the last time you saw the water over that concrete road?

A. Sometime this year, but the day and the month I couldn't tell you. I didn't keep any record of the time.

Q. But it was sometime during the year 1923?

A. Yes, sir, I noticed it this year.

[fol. 231] Q. Had you seen it over that concrete road prior to that time?

A. Yes, sir.

Q. From your experience with Pearl River in passing there for the past 22 years is it reasonable to expect that the River is going to be over the concrete road again in that vicinity?

A. I think, so, yes.

Q. Prior to the building of the concrete road there was there a road in the same general locality, any kind of road?

A. Yes, sir.

Q. Approximately on the same line?

A. Yes.

Q. As a practical man and from your observation of Pearl River is there danger from the overflow waters of Pearl River to the A. & V. Railroad?

A. Yes, sir.

Mr. Stone: He is not testifying as an expert on drainage and water condition. We think he can only state the facts and let the Court draw the conclusions.

The Court: I think it is competent. He knows the effects of the water. I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Evans, as a practical railroad conductor can you tell the Court whether it is practical to operate trains when the water is over your rails for any substantial depth?

A. It is not.

Q. If a railroad is to be continually operated does your experience [fol. 232] teach you that it must be built above high water?

Mr. Stone: We object to the leading question.

The Court: I sustain the objection.

Q. What must be the elevation of a railroad track if you wish to operate it continually?

A. It must be entirely out of reach of the high water.

Q. If the embankment of the Jackson & Eastern Railroad is built on the line indicated on the map Exhibit "F," which I am here indicating to you, and built above high water, what from your experience will be the effect of the waters of Pearl River as to the bridge of the Alabama & Vicksburg Railroad?

Mr. Neville: He is calling for an opinion of the witness and the witness has not qualified as an expert on drainage.

The Court: Let him state what has occurred, if he knows.

By Mr. Monroe:

Q. Mr. Evans, as a result of the building of even this comparatively small embankment for the concrete road what has been the effect of the flow of the waters of Pearl River as to the A. & V. embankment?

A. It has had this effect, it has driven the waters of Pearl River out over the swamp up to the foot hills at Pierson, four or five miles out. And it has driven more waters against Farish Bridge, holding the water in kind of a tunnel shape, and of course, the increase of waters will make it more dangerous as to washouts.

Q. State to the Court whether or not from your experience in the past 22 years the construction of this proposed Jackson & Eastern embankment would materially increase the danger of washouts as to the A. & V. line?

[fol. 233] A. Yes, sir.

Q. You spoke awhile ago of a register office. Explain to the Court what you mean by a register station?

A. A register station is a book provided for the keeping of the records of trains that pass a certain place, the name of the conductor and the engineer and the number of cars on each train.

Q. And the time?

A. Yes, sir, the time of arrival and departure.

Q. Is such an office understood to be located where foreign lines come on the main line of another railroad?

A. To have a register station.

Q. Is there at present any telegraph station at the proposed point of junction?

A. No, sir.

Q. Is there any depot or building of any kind?

A. No.

Q. If you had a register station at that point would it be necessary for trains to stop there?

A. All trains would stop there to register.

Q. Would that occasion any delay in the operation of trains?

A. Yes, sir.

Q. What proportion of the Alabama & Vicksburg trains, passenger and freight trains, carry interstate commerce?

A. All of them. 100 per cent of them.

Q. And all of these trains would be delayed by this junction?

A. Yes, sir.

Mr. Stone: We object to him leading the witness.

[fol. 234] What would be the effect on the efficiency and speed of handling the trains on that piece of track, if all the trains passing there were compelled to stop there and register?

A. It would seriously effect that piece of track between Pierson and Jackson. That is a very busy piece of track in there, especially

from 6:30 in the morning until late at night, say to 10:00 or 11:00 o'clock. A good many trains pass through there, our regular trains and extra trains, and if more traffic is put on there it will cause greater delays, as the holding up of one train delays the other trains on the line.

Q. I wish you would explain that to the Court, please?

A. Take train Number Four out of Jackson, we are due at Jackson at 8:10, consequently by eight o'clock all the other trains must clear the track for this train, and that delays the work, especially if we are a few minutes late. They get the time for our departure from the time table.

Q. Suppose you were compelled to take on express or mail or were delayed for any other reason in Jackson, what happens?

A. If our train leaves Jackson at 8:10 and we are delayed from 15 to 30 minutes, from the time that track is cleared for us until after we pass over it, it belongs to us and can't be occupied by any other train. The track belongs to us until after we pass Pearson.

Q. Give us in detail, go back and give that in detail to the Court. You leave at 8:10?

A. Yes, sir.

Q. The track begins to belong to you when?

[fol. 235] A. At 8 o'clock.

Q. Suppose you are delayed 15 or 20 minutes putting on express, what happens?

A. Let me give you the figures this way.

Q. All right, go ahead?

A. We will say that we are delayed 20 minutes leaving out of Jackson at 8:30. It is about 18 minutes from Jackson to Pearson, then that would put us at Pearson about 8:49. From 8 o'clock to 8:49 ours is the only train that can go on that track. This train is followed by 52, a high class freight train, but it has to wait until we clear the track.

Q. Now, let us illustrate that a little bit further. Suppose a west bound freight train comes to Pearson at eight o'clock in the morning, tell the Court what happens?

A. The freight train would have to go in the side track.

Q. You call it going in a hole?

A. Yes, clear the main line, it should be. The freight train would have to clear the main line at 8 o'clock, and if we don't, which we don't, get there until 8:49 or 8:50 we have given them from 50 minutes to an hour's delay.

Q. Mr. Evans, suppose there is a register station put in between Pearson & Jackson, what effect would that have on the operation of your trains?

A. Mr. Monroe, it takes at least five minutes to register and get away from any register station, and if passengers get on and off it will cause a great deal longer time, and the freight train at Pearson [fol. 236] will be held up that much longer than it was already held up. We also have a register station at West Jackson. To register at this point of junction the conductor would have to walk over the train or down along side of the trestle after the train stopped and

It would take from 10 to 15 minutes for him to register, and maybe longer than that.

Q. Something has been said about rejected cars. I want you to explain to the Court as a practical railroad man what would happen—Let us suppose that the J. & E. comes, as the plans indicate, directly into the main line of the A. & V. at the proposed point of junction. Tell the Court how you would get cars from and give to the J. & E. Give in detail the operations so the Court can see it would be done?

A. If we had cars for the J. & C.?

Q. Yes?

A. We would go down there and get on their track and get the cars they had for us and bring them out over the switch on the A. & V.

Q. Suppose you go down and open the switch into the A. & V. to get three cars and start back on the main line with the three cars and suppose the middle car is a bad order car, one that does not come up for inspection?

A. You throw one out on the main line and throw this one back.

Q. I want you to give each separate movement?

A. We go down from the A. & V.'s main track to the main track of the J. & E.

Q. Look at the paper here. We will consider this the A. & V.

A. We have gone from the main track of the A. & V. to the main track of the J. & E. here.

Q. You go down here where the cars are placed and you find that the middle car is termed a defective car?

A. We go down and get the cars and the one that is defective is thrown back down there.

Q. Your engine first leaves the track of the A. & V. to get the three cars?

A. Yes, sir.

Q. Then it goes back on the A. & V. track with the three cars?

A. Yes, sir.

Q. You then shift—

Mr. Stone: We object to the leading.

The Court: I understand what he is illustrating.

Q. Now does all that movement to which you refer take time?

A. Yes, sir.

Q. During that period what would be the status of this track between Pearson and Jackson?

A. This piece of track for that time would be absolutely tied up for one train to do this work because he has the right of way in there at the time he goes in there until he has done this work and gone.

Q. Could any other train operate between Pearson and Jackson during that time?

A. No.

Q. Now, Mr. Evans, reference has been made here to a proposed mile on the Jackson & Eastern track out some distance. I believe it [238] is stated 100 feet from the point of junction. I would like

for you to tell the Court, from your 22 years experience as a conductor, what would be the effect of this derail lock?

A. You propose to protect this point with a derail, locked?

Q. It is proposed to further protect the A. & V. by a derail switch, which is placed on the rail of the applicant 100 feet from the turn out?

A. I know what you mean. And this switch is to be kept locked. The effect of such a derail switch is this from my experience. You can't keep it locked. They have been so ineffective that all the roads that I know of have done away with them.

Q. Why?

A. Because they can't keep them locked by the train crew. They throw the locks away. I know I have been one of them myself. The man will go out and unlock the switch for a few minutes and then instead of locking he goes on thinking he will be back and he goes off and never comes back and the switch is left unlocked.

Q. From your point of view as a train operative for 22 years what have you to say to this proposed method of protection, whether it is of any advantage to the A. & V.

A. It is absolutely no protection at all.

Cross-examination by Mr. Stone, for the defendant:

Q. Mr. Evans, you understood, or did you, that this switch connection with the Jackson & Eastern, that in switching cars on the A. & V. and the A. & V. switching cars on the J. & E. did you understand that they were to use the main tracks of the other line? Was that your understanding?

[fol. 239] A. I don't understand your question.

Q. Was it your understanding of this switch connection, interchange connection, that the Jackson & Eastern will switch cars on the track of the A. & V. and the A. & V. will switch cars on the track of the J. & E.? Both have access to the main lines?

A. You mean to exchange cars?

Q. Just answer my question.

A. I don't know what you are talking about.

Q. Did you understand in your testimony that this switch connection will give the Jackson & Eastern the right to use the main track of the Alabama & Vicksburg?

A. Why did they want the connection if they didn't expect to use the line of the A. & V.

Q. It is your understanding that they will use the line of the A. & V.?

A. That they will use the A. & V. That is my understanding.

Q. And your testimony is given from your experience in rail-roading?

A. Yes, sir.

Q. Now, you testified that this track thrown up above the high water line would throw the water back into Pearl River and jeopardize the railroad track at the bridge?

A. I think so.

Q. Do you know how this J. & E. track is to be built?

- A. I know the outline of how it is going to be built.
 Q. You don't know how it is going to be built?
 A. No.
 fol. 240] Q. You don't know?
 A. It couldn't connect with the A. & V. without an embankment.
 Q. You don't know how many openings are to be made in the J. & E. to take care of the water?
 A. No, I have never heard.
 Q. You don't know what facilities are to be provided for the water?
 A. Of the J. & E.?
 Q. Yes.
 A. No.
 Q. In testifying you haven't taken into consideration any openings?
 A. Yes, sir.
 Q. What openings have you taken into consideration?
 A. These openings.
 Q. How many openings?
 A. What I have seen.
 Q. What openings have you seen?
 A. It looked like there was one or two places left for trestles.
 Q. How big?
 A. I couldn't tell you. I never measured them.
 Q. One or two places?
 A. Yes, sir.
 Q. Your testimony is based upon your observation of the situation and your experience in railroading?
 A. Just what I have seen and what I know will happen.
 Q. You are basing your testimony on what the height of the embankment will be?
 fol. 241] A. I don't know how high the dump will be.
 Q. You testified -whil- ago you had seen the water a few times over the concrete road. Show me where the water run over?
 A. I told you at the end of the bridge.
 Q. Show me on the map?
 A. Here is the concrete road.
 Q. Here is the road here. Where did the water run over the road?
 A. At both ends of this bridge.
 Q. It was entirely west of where this junction is to be made?
 A. At the bridge.
 Q. You say that the water overflowed the concrete road?
 A. Yes, sir.
 Q. Has the water ever overflowed the A. & V. tracks here?
 A. Yes, it has.
 Q. As the tracks are now constructed?
 A. I have never seen it.
 Q. Have you ever seen the water overflow the dirt road?
 A. I have never been down on the dirt road, this is as far as I have seen.
 Q. You are not an engineer, a civil engineer?
 A. No.

Q. Now, you spoke of the elevated track on one side of the A. & V. That elevation is made for safety in the case of speed, is it not?

A. The elevation is made for the protection of trains going over the road, to prevent derailment.

Q. If the train is running slowly there is no danger where the curve is no more than 2 degrees?

[fol. 242] A. Yes.

Q. It is dangerous?

A. Yes, sir.

Q. Is it your understanding that the outside rail of the A. & V. will be interferred with in this construction?

A. Mr. Stone, I am not trying to be mean, but I don't understand your question?

Q. Do you understand that the elevation of the outer rail of the A. & V. will be interferred with in this construction?

A. I do.

Q. You do?

A. Yes, sir.

Q. And you based your testimony on that?

A. Yes, sir, it must be interferred with.

Q. And you base your testimony on what you think about it?

A. Not what I think, on what I know.

Q. It will be interferred with?

A. Yes, sir.

Q. Now, suppose that elevation of the A. & V. will be left like it is, not lowered at all, then how would you answer?

A. I would still answer yes.

Mr. Monroe: We will show that by engineers when we get to it.

By Mr. Stone:

Q. You testified at length about the switching of trains from the Jackson & Eastern to the A. & V. and vice versa. How many lines do you understand that the Jackson & Eastern will have to do the switching on?

[fol. 243] A. How many lines?

Q. Yes.

A. I didn't suppose that they would have but one.

Q. You were assuming that they would have only one track?

A. That's all, I didn't know about any other tracks they might have.

Q. You were basing your testimony on the fact that the Jackson & Eastern would have only one track to do the switching on?

A. I didn't know how many tracks they would have.

Q. I am asking you whether or not you were basing your testimony upon the idea that the Jackson & Eastern would have only one track?

A. I have no doubt answered the question. As to what kind of track they are going to make, I don't know.

Q. I understood you to say that in switching if you had a bad car in the train that car would be left on the main line of the A. & V.

Suppose there are other tracks. Would that occur if you were making up a train in a yard?

Mr. Monroe: We object. There is nothing here about a switch yard.

Mr. Stone: Don't interrupt me, Mr. Monroe.

Q. Will you answer my question, Mr. Evans. Suppose the J. & E. had a number of switch tracks down in its yard couldn't you go down there and get the cars off the switch tracks and make up the trains in the switch yard?

Mr. Monroe: We object, there is nothing in the condemnation proceedings about a switch yard.

The Court: I will let him answer.

[fol. 244] Mr. Monroe: We except to the ruling of the Court.

Q. Mr. Evans, the switching and the breaking up of trains and getting bad cars out of the way right here in the yards, down here in the yards, the A. & V. uses its main track, don't it?

A. How was that Mr. Stone?

Q. I try to be clear, so listen at me. The switching and breaking up of the trains of the A. & V. right here in the yards in Meridian by the A. & V. where they use their main line?

A. The main line is used, yes.

Q. The main line is used in cutting up their trains?

A. Yes, that is done in the yards. The switch engines of the Southern, the A. G. S. and the A. & V.

Q. Other railroads use your main line?

A. In making up their trains.

Q. In order to handle traffic it becomes necessary, does it not?

A. Not necessarily.

Q. Now, let's get back to the junction point. Do you understand that the J. & E. wants to use the track of the A. & V.?

A. If they don't want to use it why are they seeking this junction.

Q. I asked you if it was your understanding that the Jackson & Eastern wanted to use the main line of the A. & V.?

A. And I answered you by saying if they don't want to use it why are they seeking this junction.

Q. Do I understand that you understood that they were going to undertake to run their trains on the A. & V. Railroad's track?

A. I think I have answered that question.

Q. Mr. Evans, you understand me?

[fol. 245] A. I feel like I have answered your question on that point.

Q. Let me ask you again, simply as I can. Is it your understanding that the Jackson & Eastern will by its own switch engines and crews run its trains, if this connection is made, on the A. & V. tracks?

A. I can't see why they want this connection if they don't want to use the tracks of the A. & V.

Q. You can't answer that?

A. I am answering it.

Q. Then you do understand that they will do it?

A. I have answered the question.

Mr. Stone: Judge do you understand his position?

The Court: I understand.

Q. Then you base your testimony on that understanding?

A. I have answered your question the best I know.

Q. Your testimony is based upon your understanding of the situation and your experience as a railroad conductor?

A. Now, Mr. Stone, I don't want to be mean, but I think I have answered your question.

Q. No, sir, you haven't answered it?

A. I have answered it the best I can.

Q. What is your answer?

A. I told you that I answered it this way. I can't see why the Jackson & Eastern would seek a connection, to get a connection with the A. & V. if they didn't expect to use their line.

Q. We got that. My present question is, is your testimony based on your understanding of the situation there and your experience as a railroad conductor?

[fol. 246] A. And I have answered it.

Q. Answer it yes or no?

A. I have answered it.

Q. What is your answer?

A. Give me your question?

Q. I asked you if it is a fact that your testimony touching the various delays that would be occasioned in the operation of the A. & V. train would result from the handling of these trains by the Jackson & Eastern running its trains on the track of the A. & V. and the A. & V. running its trains on the track of the J. & E. if that is what you based your testimony on?

A. I feel like I have answered the question thoroughly.

Q. You spoke awhile ago of a register station. A register station is necessary only where two roads cross or both use the same lines?

A. Yes, sir.

Q. And for scheduled trains?

A. All trains use the register, Mr. Stone.

Q. Isn't it a fact that a register station is necessary only where both roads use the track and only for scheduled trains?

A. We have other than scheduled trains.

Q. Answer my question?

A. Any junction carries a register station.

Q. Any junction carries a register station?

A. Of that kind, of the kind proposed.

Q. And your understanding of what is proposed is that we are going to run on your line?

[fol. 247] A. I understood what was read to me there and what has been said by you.

Mr. Monroe: When you say what was read to you, I want the record to show that he refers to the petition for the condemnation.

By Mr. Stone:

- Q. That is your construction of the instrument?
- A. That a register station will be necessary at that junction.
- Q. Suppose that the Jackson & Eastern does not intend nor cannot run its trains on the A. & V. at all, but that this junction is simply intended as a switch connection whereby the A. & V. will be able to take possession of the traffic delivered there by the J. & E.?
- A. It is still necessary to have a register station.
- Q. Where the Jackson & Eastern runs its trains on the track of the Alabama & Vicksburg or not?
- A. Mr. Stone, I have answered your question the best I can.
- Q. You had a great deal to say about signals being given on curve. You have a curve at Pearson and a switch at Pearson?
- A. How was that?
- Q. You have a switch on that curve at Pearson?
- A. On level ground.
- Q. I didn't ask you about the ground?
- A. I have answered it.
- Q. You said the ground was level. I am asking you if there is not switch on the curve at Pearson?
- A. There is a switch on a very light curve at Pearson, and it is on level ground.
- fol. 248] Q. I didn't ask you about the level ground?
- A. That is my answer.
- Q. What is the degree of the curve at Pearson?
- A. I can't answer that question.
- Q. Isn't it a greater or sharper curve than the one at the point of junction?
- A. I am not sure. I don't know the degree of the curves in figures in either case.
- Q. That switch was put there by the A. & V. to do its own switching?
- A. I presume so.
- Q. Isn't there a switch on the outside of a curve at Chunky?
- A. Turn out switch.
- Q. Isn't it on a curve?
- A. It is a very slight curve and turns into the main line.
- Q. There is switching done on that curve?
- A. It is a slight curve.
- Q. What is the degree of the curve?
- A. I can't answer that. I have never figured it.
- Q. Can you give us your best judgment?
- A. No.
- Q. In the interchange of traffic at Meridian does the M. & M. engines go on the track of the A. & V.?
- A. How was that?
- Q. You run over your railroad down here by the overhead bridge?
- A. Yes, sir.
- Q. I am asking you whether or not the M. & M. trains ever run fol. 249] on the tracks of the A. & V. in the interchange of traffic?

A. I can't tell you, I don't interchange it.

Q. You don't know whether they do or not?

A. I don't go down there.

Q. You gave your idea of the flood conditions of the Pearl River along the A. & V. All you know about it is what you have observed by riding by there?

A. My idea of the flood conditions along the A. & V. is based on what I have seen, and the facts.

Q. I understand, but you got your information merely by what you observed in riding by there?

A. I worked there, did construction work there, I was actually on the ground.

Q. But you observed the conditions by riding along there?

A. I told you no. I told you that I had worked this track. I actually did the work along there, there on the ground. I have handled the conditions there myself.

Q. Well, say since the concrete road was put along there your observation of the flood situation has been either from the train or down by the side of the train?

A. From the train and on the ground, either one.

Q. Well, where were you when you made your observations?

A. I have seen it from the train and on the ground by handling the men in re-constructing the track.

Q. I asked you since the concrete public road was constructed along there?

A. I answered you while ago.

[fol. 250] Q. I said since the concrete road was constructed?

A. I don't remember when it was constructed.

Q. Was it within the last three, or four or five years?

A. I don't remember the date, and I am not going to say as my answer might be wrong.

Q. I am not asking you the date?

A. What are you asking me then?

Q. I am trying to get the time of your observation of these conditions, and whether or not you base your testimony on your observations from the train as you were riding by there, or whether or not you have gone over the territory and made the investigations?

A. Your question was, since the road was put there, and I don't remember when the road was put there.

Q. Well, I won't ask you any more, I have made it as plain as I know how.

Q. In operating a train around a curve it is the duty of the fireman to be on the lookout for signals to be able to assist the engineer in his vision?

A. I don't know what you mean.

Q. If there is anything to obstruct the vision of the engineer it is the duty of the fireman to assist him?

A. The fireman is on duty, too.

Q. Please, sir, answer my question?

A. I am trying to answer you now.

Q. You can answer the question and then make all the explanations you want to make. Is it the duty of the fireman in operating a train around a curve to occupy a position where he can assist the [fol. 251] engineer in keeping a lookout?

A. I don't know what you want me to say.

Q. You can answer yes or no?

A. If I said either yes or no my answer would be improper.

Q. Then explain why it is true or not true?

A. I can't answer that yes or no.

Q. All right, I won't ask you that any more. What speed ordinarily do your trains make at this point of proposed junction?

A. We have different speeds for different trains.

Q. Do your local passenger trains make?

A. From 50 to 55 miles an hour, sometimes 60 miles, perhaps.

Q. You are how close to a sharp curve?

A. How close?

Q. I will change my question. Do I understand that there is a 12 degree curve just as you come up to the River on the west side of the River, next to Jackson?

A. Coming from the west.

Q. How far is that curve from this proposed point of junction?

A. I couldn't tell you. I have never seen it measured.

Q. You run over it 34 times a month?

A. About that.

Q. And you have been in the service 22 years?

A. Yes, sir.

Q. Well, can't you give me the approximate distance?

A. I don't know just what it is.

Q. Can't you look at the map and tell me the distance?

A. I couldn't look at the map and tell you what the distance is. [fol. 252] Q. Is it a long distance?

A. No, sir, it is not a long distance.

Q. How far east of the east bank of the River is this proposed point of junction?

A. How far east of the east bank of the River?

Q. Pearl River?

A. I can't answer that, I have never seen it measured.

Q. What would you approximate it?

A. I can't tell you.

Q. But in that distance between that 12 degree curve, sharp curve near the west bank of the River and this proposed point of junction, between these two points, you have the River and Farish Bridge?

A. Yes, sir.

Q. And you have a high trestle at Curran's Crossing, haven't you?

A. Yes.

Q. How fast do you say your fast trains run?

A. I would say about the same as our local trains, you know the locals run about as fast as the fast trains between stations.

Q. I am just trying to get it in the record?

A. All right.

Q. How fast do you run leaving Meridian going out by the Meridian & Memphis?

A. In the yard limits we are governed by the yard limits.

Q. How fast do you actually run?

A. I can't answer that question. Sometimes from 8 to 10 miles, or it might be slower than that.

[fol. 253] Q. What is the maximum speed?

A. I told you that we go slow through the yard limits.

Q. What does your time table show that you are due at Meehan Junction?

A. The time table?

Q. When are you due out of Meridian to Meehan Junction?

A. I have the time furnished me, but it is dangerous to memorize time tables.

Q. What time does the train leave Meridian?

A. I couldn't tell you what time it leaves Meridian.

Q. What time does Number Four get to Meehan Junction?

A. I would have to look at the time table.

Q. Mr. Evans, you have testified about the traffic between Pearson and Jackson. How many passenger trains have got on your line?

A. Four each way.

Q. How many passenger trains a day are operated over this piece of track each way?

A. By Curran's Crossing my answer is four each way.

Q. How many trains is that in all?

A. That would be eight.

Q. What is the time it takes to run from Jackson to Pearson?

A. Do you mean the actual time from the time they leave the station?

Q. Give me the average time it takes to run from Jackson to Pearson?

A. The time varies.

Q. Give me your average time?

[fol. 254] A. I can't average it.

Q. You can give me the running time from Jackson to Pearson?

A. The time that you would consume to run from Jackson to Pearson would depend on different things.

Q. You can certainly answer my question, you answered the question for Mr. Monroe?

A. I have answered it.

Q. About the time that you said this train Number Four would use from the time it left Jackson until it got to Pearson?

A. I couldn't give you that time because it might take longer sometimes than it would other times.

Q. Answer it and then explain the situations?

A. There is a great deal of time lost in the yards.

Q. Isn't it about 18 minutes?

A. I haven't answered it that way at all.

Q. A great deal of time is consumed in the yards, what are you talking about?

A. We lose time in getting in and out of stations.

Q. You said that it would take 18 minutes to run from Jackson to Pearson, then for the 8 passenger trains on there every day it would take 144 minutes. That is a little over 2 hours out of the

24. How many freight trains do you have on there a day?

Mr. Monroe: We object to that as being immaterial.

The Court: I think he has a right — cross examine the witness.

Q. Will you give me a time table?

A. No.

Q. Have you got one?

A. I will have to go home after it.

[fol. 255] Q. How many freight trains are run over that road a day, between Jackson by Curran's Crossing to Pearson?

A. Both ways they have extras, and sections of trains, and things of that kind.

Q. You can give me the average can't you?

A. I will have to explain that. We may have extras today and tomorrow we may not have any.

Q. Will you give me the average number a day to the best of your judgment?

A. That is impractical. I can't answer that in the right way.

Q. How many are regular?

A. Scheduled?

Q. That is what I am asking you?

A. I can't answer that.

Q. You don't know that?

A. Scheduled, Six.

Q. Six each way?

A. No.

Q. Three each way?

A. Yes, six in all.

Q. What is the average time it takes a freight train to run from Pearson to Jackson?

A. I couldn't answer that.

Q. The average, Mr. Evans?

A. I will have to answer the question and then change the answer.

Q. You decline to try to answer it?

A. No, I don't decline to try to answer it.

[fol. 256] Q. You haven't answered it?

A. I decline to say what you want me to say when you won't let me explain why.

Q. All I want to get is the facts?

A. I know what you want.

Q. Would you say that the average time is 18 minutes?

A. You know that the average time of freight trains is more than passenger trains.

Q. Would you say it is more than 20 minutes?

A. Under different conditions the time would be different.

Q. I am asking you how much time it would take?

A. I have answered you.

Q. Can't you give any average?

A. I tell you that I have answered your question.

Q. How far is the depot in Jackson from Curran's Crossing?

A. I have never measured it.

Q. Will you give me your best judgment?

A. I wouldn't be safe in giving it.

Q. I asked for your best judgment?

A. And I have answered that my best judgment is that I don't know.

Q. I asked you to give me your best judgment as to the distance from Jackson to Curran's Crossing?

A. And I told you that I don't know.

Q. Can you give the distance from Curran's Crossing to Pearson?

A. I don't know the distance.

Q. What is the distance from Jackson to Pearson?

[fol. 257] A. I think it is between five and six miles.

Q. Is it further from Curran's Crossing to Jackson or from Curran's Crossing to Pearson?

A. I answered that I don't know what the distance is in feet, I have never measured it.

Q. I asked you if it was further from Curran's Crossing to Jackson or from Curran's Crossing to Pearson?

A. And I answered that I didn't know what the distance is, I don't know.

Q. You don't know?

A. No.

Q. Do you know which is greater?

A. No, I don't know.

Redirect examination by Mr. Monroe, for the complainant:

Q. Mr. Evans, do you intend to convey on this record the impression which seems to have been gathered by some, that the track between Jackson and Pearson is only occupied for 18 minutes by the average passenger train?

A. By no means. I explained that this morning.

Q. In other words, in your illustration you stated that the track was occupied for approximately 50 minutes by one passenger train?

A. Yes, sir.

Mr. Stone: We move to exclude the statement of counsel from the record.

The Court: The witness made that statement this morning.

By Mr. Monroe:

Q. Is there any regulation in regard to train operatives attempting [fol. 258] to memorize train schedules?

A. No, sir, we are not supposed to memorize them. We carry a time table in our pockets all the time.

Q. Is there any regulation that you should not memorize them?

Mr. Stone: We object to his leading the witness.

The Court: I sustain the objections.

Q. What is the regulation?

A. Not to memorize them, but carry them in the pocket and refer to them.

Q. What is your understanding for the reason you are prohibited from memorizing them?

We object to the leading.

The Court: Don't lead him.

Q. State in the record the reason for not memorizing them?

A. The reason for not memorizing them is to avoid depending on the memory. If the time table reads 10:55 it might be conveyed on the mind as 10:50 or 10:00 something else, and to read the time table wrong would cause accidents.

Q. Mr. Evans, I want you to state again, as a result of your 22 years of experience, whether the piece of track from Pearson to Jackson is already heavily burdened with traffic?

Mr. Stone: We object, he has already stated that.

The Court: I sustain the objections.

Q. Mr. Evans, you were questioned on cross examination about the conditions of the switch at Pearson. Please state from your experience whether the conditions of the switch at Pearson is similar to the conditions of the proposed junction here in controversy? [fol. 259] A. No, they are not similar.

Q. You were asked about the switch at Chunky. Please state to the Court whether or not the switching conditions at Chunky, from your experience and observation, are similar to the condition here at the proposed junction?

A. No, sir.

Q. Is either the switch at Pearson or the switch at Chunky on a fill?

A. No, sir.

Q. Are they on level ground?

A. What we call level ground.

Q. At either Pearson or Chunky is there an intersection of another railroad?

A. No.

Q. Is Chunky an incorporated town?

A. Yes, sir.

Q. Let us suppose for the sake of argument, Mr. Evans, that it is not proposed that the Jackson & Eastern should do what it says in the condemnation proceedings, that is, own, occupy and use a portion of the main line of the A. & V. Then, if it doesn't use that, then would the proposed point of connection, as indicated, be objectionable from your observation and experience?

A. Yes, sir.

Q. Would it, even, if the trains of the A. & V. only went down on the Jackson & Eastern still be a dangerous junction?

Q. Yes, sir.

Mr. Stone: We object to the leading.

(Witness excused.)

[fol. 260] ED GRAHAM, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. Please give your name, residence and occupation to the stenographer?

A. Ed Graham, residence, Meridian, Mississippi, engineer on the Alabama & Vicksburg Railroad.

Q. Are you a passenger or freight locomotive engineer?

A. Passenger.

Q. How long have you been a passenger locomotive engineer?

A. I have been regular about six years, and I run extra on the passenger trains from 10 to 12 years.

Q. On what road?

A. On the A. & V.

Q. How long have you been with the A. & V. Railroad?

A. 30 years. I have been running an engine since the first of 1900.

Q. And you have been connected with the railroad how long?

A. For 30 years.

Q. Prior to the time that you began to run regular on the passenger trains as an engineer, what did you do?

A. I run a freight engine, and work trains.

Q. How long did you run a freight engine?

A. Let's see. 17 or 18 years.

Q. And prior to the time you run a freight engine what did you do?

A. I was fireman. Fired an engine.

[fol. 261] Q. During this period of 30 years between what points have you been running?

A. Vicksburg and Meridian, and Meridian and New Orleans.

Q. At the present time, do your duties take you frequently across the track between Pearson and Jackson, Mississippi?

A. Yes, sir.

Q. About how frequent do you cross that piece of track?

A. We make that about 34 times a month, about 34 trips.

Q. 34 times a month?

A. Yes, sir.

Q. Are you familiar with the location of the proposed junction point of the Jackson & Eastern Railroad and the Alabama & Vicksburg Railway, being in the vicinity of Curran's Crossing?

A. Yes, sir.

Q. Have you observed that locality, are you familiar with it?

A. Yes, sir.

Q. How long have you been familiar with it?

A. Since they considered making their connection there.

Q. Prior to that time you had been crossing that point?

A. Yes, sir.

Q. And you were familiar with it?

A. Yes, sir.

Q. That particular crossing is between Jackson and Meridian, is it?

A. Yes, sir, just this side of Jackson.

Q. So that in your experience, as long as you have been operating between Jackson and Meridian, you have been crossing that point?

[262] A. Yes, sir.

Q. Is the A. & V. at that point straight?

A. It is on a curve, a stiff curve.

Q. What effect, from your point of view, as a locomotive engineer, that fact upon the desirability of that place for a junction point?

A. We think it is awfully dangerous place, the men I represent.

Mr. Stone: We object to what his men think about it.

The Court: Has he stated what his position is with the engineers?

A. Locomotive Chairman for their committee.

By Mr. Monroe:

A. Has any complaint been made to you as such chairman of the locomotive engineers of the Alabama & Vicksburg Railway to this proposed junction?

A. Yes, sir.

Mr. Neville: We object unless they can show that the men who made the complaints had correct knowledge of what the Jackson & Eastern proposes to do, and then, we submit, if the Court please, that evidence is hearsay, and object to it on that ground.

The Court: I understand that the question before the Court is whether or not this is a dangerous point to have an interchange line, I understand that your objection is for one thing that the men do not have knowledge of what the track is to be used for, but not whether what the line is to be used for, and whether they know or not, I assume they know whether it is a dangerous place for a connection or not, and I think their complaints would be admissible as testimony [263] money to show that this is or is not a dangerous place for connection. It may be remote evidence, but I think it is admissible, so I will overrule your objections.

Mr. Neville: We except to the ruling of the Court.

Mr. Stone: We object to the question with reference to the complaints made by other men unless it be shown that the parties who made the complaints had correct knowledge of the rights of the Jackson & Eastern at the point of junction where the switching was to be made and as being otherwise, incompetent, irrelevant and immaterial.

The Court: I overrule your objection.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. Answer the question, please, have any complaints been made?

A. Yes, sir.

Q. Will you please state what the objection to this proposed junction is?

A. My men object to it—

Q. State what your objection is?

A. I will give my own objections which is the objection of all the men on the railroad—

Mr. Stone: We move to exclude that statement.

The Court: I sustain the objection.

A. Well, it is on a curve, one thing.

Q. Well, give the objections to this proposed point of junction?

A. Well, if the junction is made here the switching, more or less, will have to be done on the north side of the track, and the men would [fol. 264] have to go to the lower side of the track to give the signals to the engineer, and then they could not give the signals direct to the engineer but they would have to be given to the fireman. To get to the lower side of the track from the upper side would be difficult as there are trestles on each side of the proposed junction, across which they would have to walk, and if there was to be any coupling and uncoupling of cars there that would have to be done across these trestles, which couldn't be done otherwise. We have some rules in our rule books—

Mr. Stone: We object to the rule book.

The Court: I sustain the objection.

A. We, to carry out our rules, the switching on this curve under rules 152 and 153—

Mr. Stone: We object unless he introduces the rules.

By Mr. Monroe:

Q. Mr. Graham, from the point of view of this being on a curve state what dangers there would be as to this proposed point of junction being on a curve?

A. Well, it is merely a death trap for the train men, it is just a death trap, that is the way we consider it.

Q. I want you to get clearly in this record what happens if you go up to that point of junction from the east and stop at that point of junction and attempt to do some switching, where would the work be, on the side towards the Jackson & Eastern or on the side away from the Jackson & Eastern?

A. The work would be done on the side next to the Jackson & Eastern, but the signals would be given from the other side, and the train men would have to do their work from the opposite side [fol. 265] from their signalling, then all the signals are given to the fireman the engineer can't see the crew at all, and there is a crossing right there.

- Q. What crossing is that?
- A. It is known as Curran's Crossing, and the crossing is on a fill, which is dangerous. It is already a dangerous crossing.
- Q. What is the situation as to the fill there of the A. & V.?
- A. It is on a high fill. I say a high fill, I suppose it is 10 feet, or something like that.
- Q. What have you to say as to that in connection with the proposed junction?
- A. Just as I said before, it is a death trap for the train men doing the work on that fill.
- Q. You heard me read awhile ago, you were on the witness stand, the allegations in the petition of the Jackson & Eastern in the condemnation suit, did you not?
- A. Yes, sir.
- Q. Do you have these allegations in mind in giving your testimony?
- A. Yes, sir.
- Q. Can you tell me in relation to this proposed point of Junction of any trestles on the A. & V. track?
- A. Yes, sir.
- Q. Where are the trestles with reference to the proposed point of junction?
- A. There is a trestle on both sides of the proposed junction.
- Q. How close to the proposed point of Junction?
- fol. 266] A. I never measured it. It is less than half a train length both ways, something like that.
- Q. So that if you were going to stop at the point of junction coming from the east, would there be a trestle within the train length?
- A. Yes, sir, less than half the train length.
- Q. And if you were going to stop your train coming from the west?
- A. It would be the same thing.
- Q. There would be a trestle within the train length?
- A. Yes, sir.
- Q. What have you to say as to whether that fact is or is not dangerous?
- A. It is, absolutely a dangerous proposition to couple and uncouple cars on a trestle.
- Q. How long are these trestles?
- A. I don't know how long they are, I never measured them.
- Q. About how long?
- A. I just couldn't tell you.
- Q. What is the name of the trestle towards Jackson?
- A. That is the one there next to the public highway.
- Q. What do they call that trestle?
- A. It is called Farish Bridge.
- Q. The trestle closest to Pearl River and Jackson, how long is it?
- A. I will say 250 feet, but I really don't know.
- Q. How long is the other one, the one east?
- A. 50 feet longer, at least.
- Q. Since you have been operating up and down the A. & V. across fol. 267] this crossing for the past 30 years, have you observed the behavior of Pearl River?

A. Yes, sir.

Q. State what your observation is concerning the overflow of Pearl River?

A. I have seen Pearl River up—it used to wash our railroad away, the A. & V. away.

Q. Since the railroad was raised, and the concrete and the gravel highway was built, have you seen the water up?

A. It was up this year. The water was over the public highway.

Q. It has washed the railroad track away?

A. Yes, sir. And the cars were detoured by Hattiesburg, and from Hattiesburg to Vicksburg over the G. & S. I. and when the G. & S. I. was washed away from Hattiesburg over the Mississippi Central to Brookhaven and from Brookhaven over the Illinois Central to Jackson.

Q. That was the A. & V. that took its traffic in that direction?

A. Yes, sir.

Q. You say the G. & S. I. was washed out, where was that?

A. Their bridge over Pearl River.

Q. From your knowledge and experience as a locomotive engineer for 30 years, will you state whether it is or is not necessary for a railroad to be built above high water?

A. Yes, sir, sure.

Q. From your practical observation of Pearl River, under present condition, when Pearl River overflows where does the water go?

A. It goes all over the bottoms of Pearl River, the swamps of [fol. 268] Pearl River, Mr. Monroe.

Q. From your observation of the waters of Pearl River, in case a railroad should be built down the Pearl River, following in the direction indicated on the map "F" for the Jackson & Eastern track, what would be the effect on this flow of waters in so far as the A. & V. is concerned, the embankment of the A. & V.?

Mr. Neville: We object, he has not qualified as an expert on drainage.

The Court: I suppose from his experience he can answer.

Mr. Neville: We except to the ruling of the Court.

A. It would throw all the water that went back out in the valley for three or four miles, all that water would go down against the right of way of the A. & V., down against our bank, and it would, no doubt, be damaging to the railroad track. I feel sure that such a thing would happen, I look for it anyway in case of high water.

Q. From your 30 years experience in that valley would you consider that serious, to throw that water down against the A. & V. embankment?

A. Yes, sir.

Mr. Stone: We think he is leading the witness.

The Court: I sustain the objection.

Q. Please state from your 30 years' experience and observation in Pearl River Valley what would be the result in flood time of putting the proposed line of the Jackson & Eastern on the line indicated on the map "F"?

A. Well, it would be damaging to the A. & V. embankment because an awful trend of water that now goes back over the valley for three or four miles would be confined to a funnel and forced down [fol. 269] against our track. It is going to be damaging to the embankment, at the point of the proposed junction there is a pretty high bank and all the water would have to go down in that bank. I have seen it wash up the track of the A. & V. Railroad and turn the track over at that point of this proposed junction.

Q. When we had that flood that turned the track over, what were you doing then?

A. Running a work train engine.

Mr. Stone: Can you get us the date of that?

Q. Can you give us the approximate date of that?

A. No, sir, no more than it was in the year 1902. I could get the records, I was running engine Number 439.

Q. Mr. Graham, in case this proposed junction is established at this proposed point what would be the effect on the engineers running by that point?

A. Well, it would put a great deal more duty on them. We already have as much right there as we can see safely, and if we have this junction located there, and have to look for that coming around this curve it is going to be more than we can do safely, and someone else will have to bear part of the danger. It is impossible for a man to look for everything in such a short place. The men on the road know that some of our worst accidents have happened there where this junction is going to be put in, some of the worst accidents that we have on account of the fact that we can't see there, and the spot where I understand it is going to be put we can't see at all.

Q. What have you to say in regard to the traffic moving over the [fol. 270] section of the road from Jackson and Pearson as compared to the capability of the track in there?

A. Mr. Monroe, we have lots of delays in there. I understand that they figure a train is through there every hour and seven minutes. Now, number 5 going east is due at Pearson at 10:05 in the morning, and if there is a freight train in there, in that piece of track, they have got to clear that track at 9:55, and if we are several minutes late then traffic is blocked for that length of time. I have seen the time when the railroad company was piling and re-filling a bridge and the trains were in the way of getting the piling in.

Q. In addition to these scheduled trains that you spoke of, occurring every hour and seven minutes apart, are there any other trains other than the scheduled trains?

A. Yes, sir.

Q. What other trains are there?

A. We have work trains, and we have extra freight trains and different sections of these trains. Take Number Four, we run Number Four out of Jackson, due at Jackson at 8 o'clock in the morning, and it is detained there at Jackson from 20 to 25 minutes taking on express, that track is ours from 8 o'clock until we clear it, until it is cleared at Pearson.

Q. If this connection is put in here at the point indicated what will be the effect on the time consumed by each train that moves over this piece of track from Pearson to Jackson?

A. On the time that we consume going from Jackson to Pearson?

Q. Yes.

[fol. 271] A. Well, we consume 16 or 17 minutes on the passenger trains and more than that on the freight trains.

Q. What time do you consume?

A. 16 minutes actual running time, 16 or 17 minutes.

Q. As a matter of fact, as a practical railroad man, do you often make that run in a total of 16 or 17 minutes?

A. That does not include the stops, we have two stops, at Union Station and State Street.

Q. Does that include all the time that you are using that track?

A. We use the track that time and 10 minutes before that time.

Q. Suppose that this junction is put in there what will be the effect on the time that each train will use that piece of track?

A. Do I understand—

Q. You consume a certain amount of time on the track there as it is today?

A. Yes, sir.

Q. Suppose this junction point is put on that piece of track will the amount of time that each train uses that track be increased or diminished, or will it remain the same?

A. It will be increased a whole lot by that junction being there, and a register station there, necessarily that will increase the time a whole lot.

Q. For instance, at the point illustrated a freight train, suppose a freight train comes up to the point of intersection and finds that it has work to do there at that point, take on some cars for the Jackson & Eastern, would that effect the time consumed?

[fol. 272] A. It would be much longer. The freight trains, I suppose, would use from 25 to 30 minutes. That don't include the clearing time, that would be the actual running time that I have reference to. If they did any amount of switching it would be more than that.

Q. Suppose that you are operating an east bound train going to that proposed junction and stop, what effect, if any, would that have on Curran's Crossing?

A. We would block the crossing.

Q. Are you familiar with the location of Commerce Street and the A. & V. Railroad?

A. Yes, sir.

Q. In case you stopped your train at Commerce Street would you experience any difficulty in operating?

A. In going east?

Q. Yes?

A. We would have several crossing. I don't know the names of those streets and we would have difficulty in cutting the train.

Q. Why?

A. It would be on a curve and on a grade.

Q. I want you to explain to the Judge just what you would have to do to take cars from the Jackson & Eastern?

A. If the cars were on the Jackson & Eastern's main line track?

Q. And you wanted to take them for exchange on the A. & V.? Suppose you were going east explain how you would get their cars for exchange?

A. If we were going east we would have to head our engine down on their track to get them.

[fol. 273] Q. And after you headed down on their track?

A. We would pull the cars back——

Q. What cars?

A. The cars from the Jackson & Eastern.

Q. I understand that if this work is to be done on the railroad that signals would be given?

A. Yes, sir.

Q. How would those signals be given?

A. Every movement that was made we would have to cross the railroad to give the signals.

Q. Who would?

A. The train crew, the train men.

Q. Suppose you were headed down there in the manner indicated how would you get the cars from the Jackson & Eastern back on the A. & V. if when you got down there you found that one of the cars, the middle car was a bad order car, did not comply with inspection, then what would you do?

A. We would have to switch that car back on the Jackson & Eastern.

Q. Give the Judge the physical movements you would make in doing that switching?

A. If the car was in the middle we would have to shift that bad order car back down on the main line of the Jackson & Eastern.

Q. Then what would you do with your train?

A. If we were going east we would back up over this crossing, Curran's Crossing and set the bad order car back in this new railroad, then we would have to go down and get hold of this car on the main line and shift these cars ahead to Pearson.

[fol. 274] So if you found yourself in this position you- train would be behind the locomotive and the Jackson & Eastern cars in front?

A. Yes, sir.

Q. And you would have to go that way to Pearson?

A. Yes, sir.

Q. Suppose you were going headed west what would you do?

A. We would have our engine go down in *their* and get the cars.

Q. Give in detail the movements that you would make with your train if you were going towards Jackson and found three cars standing on the Jackson & Eastern Track, and the middle one was a bad order car, tell the Judge what you would do?

A. We would cut off our engine, go down in there and throw one of the cars out, go back and set the middle car in the Jackson & Eastern track and come out with the other one on the train.

Q. Would all that take time?

A. Yes, sir.

Q. During all that period of time could there be any other operations over the main line of the A. & V. between Pearson and Jackson?

A. None whatever.

Q. Suppose it was the other way around. Suppose you had some A. & V. cars that you wanted to deliver to the Jackson & Eastern, under those circumstances explain what you would do?

A. If we had any amount of cars to pick up or switch to the Jackson & Eastern, say going west it would be necessary to cut the train off at the point of crossing with the Jackson & Eastern and go down on the Jackson & Eastern and switch them out on [fol. 275] our main line, and that would be bad if we had to couple and uncouple the cars on this trestle and over this crossing east of this proposed junction.

Q. What do you mean, it would be bad to do that coupling and uncoupling over a trestle? Do you consider that it is dangerous?

A. It would mean that the men would have to get between the cars there on a trestle, and we consider that is very dangerous, it is dangerous anywhere and very dangerous on a trestle.

Q. Are you familiar with the location of the concrete road that lies between the Alabama & Vicksburg and Pearl River?

A. Just what I can see in sight of the road there.

Q. Have you seen the flood waters of Pearl River over that road?

A. I have.

Q. During this year?

A. Yes, sir.

Q. Can you give us any information as to when the concrete road was built?

A. No, sir. I can't say, I don't remember.

Q. There has been some mention made here in the condemnation proceedings that the proposed junction be protected by a de-rail placed approximately 100 feet down on the J. & E. track, I wish you would tell the Court, what, from your experience as a locomotive engineer and operative, that protection would mean to the A. & V.?

A. Why, my experience has been that it don't mean anything in the way of any protection. The men don't use it. The lock, as a rule, is thrown away, taken off—they are just thrown away, and that is all there is to it. We don't find any on any section of the [fol. 276] road that I work on.

Q. Is that method of protection by this lock and de-rail in use at the present time on the A. & V.?

A. No, sir, we have done away with them a long time ago, no, sir.

Q. It was done away with some time ago?

A. Yes, sir.

Q. Why was it done away with?

A. They never kept them locked, we were never able to keep a lock on them. We never could control them.

Cross-examination by Mr. Neville, for the defendant:

Q. Don't you keep switch locks?

A. On the main line, yes, sir.

Q. Mr. Graham, isn't it true that all the trains on the A. & V. either run from Jackson to Meridian or from Meridian to Jackson, there is none between those points?

A. No, sir, the regular trains make those points.

Q. All the trains that leave Jackson coming this way, coming east come to Meridian unless something happens?

A. Yes, sir.

Q. And it is the same way with those going west, they go to Jackson?

A. Yes, sir.

Q. They have a local each way?

A. Yes, sir.

Q. The trains between Meridian and Jackson go through Jackson?

A. Not beyond Jackson.

Q. Now, Mr. Monroe asked you if you heard the application of [fol. 277] the condemnation proceedings read and if you based your testimony on that application, and I believe you said you did, is that true?

A. Yes, sir.

Q. What provision of the application did you have in mind when you say the connection at that point is dangerous?

A. What do you mean?

Q. What kind of connection?

A. Their tracks with the tracks of the A. & V.

Q. Switch connections?

A. Yes, sir.

Q. Your testimony is based on the idea, or is it not, that the Jackson & Eastern wants a point of junction where they will have only one track?

A. All I know is what I heard Mr. Monroe read, that they want to connect with the A. & V.

Q. What do you mean?

A. That they want to connect their track with the A. & V.

Q. You mean a switch connection?

A. I suppose so.

Q. If they have interchange tracks there then——

Mr. Monroe: We object, nothing has been said about any interchange track.

Q. I withdraw that then. Suppose they have interchange tracks on the Jackson & Eastern——

Mr. Monroe: We object to the question. There is no suggestion in the condemnation proceedings that they will have interchange [fol. 278] tracks. The specifications show one track, and that is what we are trying here.

The Court: I understand your objections, but I think they have a right to ask the question, and so I overrule your objections.

Mr. Monroe: We except to the ruling of the Court.

Mr. Neville:

Q. If they have interchange tracks to connect with the main line and when the Jackson & Eastern comes into this point over that line, the main line, and brings cars up to be delivered to the A. & V. these cars will be put on the interchange track, will that trouble be done away with?

A. I don't know what you mean.

Q. Isn't it true that the main line of the Meridian & Memphis here near the yard goes into the main line of the A. & V.?

A. In the yard.

Q. It connects with the main line in the yard?

A. Yes, sir.

Q. Your testimony with reference to how you would interchange cars from your train to the Jackson & Eastern and from the Jackson & Eastern to your train is based on the idea that there would be no interchange tracks?

A. Just a switch connection.

Q. Only a straight line?

A. Yes, sir.

Q. Now, with reference to switching cars from the A. & V. train into the interchange of the Jackson & Eastern, suppose the train is going east with a car that belongs to the Jackson & Eastern what would you do?

[fol. 279] A. We would pull the train up there, stop it and uncouple this car.

Q. It is understood that the train is going east?

A. Then we would go down and get the car and bring it over to Pearson in front of the engine, then switch it back in our train.

Q. That statement is based on the idea that there will be only one track?

A. I don't know how many tracks they are going to have.

Q. All right then. We will say a train is coming to Jackson with a car for the Jackson & Eastern?

A. Yes, sir.

Q. No, we will say coming from Jackson, look here on the map?

A. Yes, sir.

Q. Now, that being the first stop this car would be next to the engine?

A. Yes, sir.

Q. That car would be next to the engine?

A. Not always.

Q. That is the custom?

A. Not always.

Q. The trains are made up at Jackson, there is a switch yard there?

A. Yes, sir.

Q. Now, isn't it customary to put the cars that are to be put out first next to the engine?

A. Not necessarily.

[fol. 280] Q. Don't you do it?

A. Sometimes the cars to be set out are in the middle of the trains.

Q. That would be bad railroading?

A. It happens that way. No, sir, I don't say that.

Q. When the trains are made up at Jackson they put the cars where ever they want them in the trains?

A. Yes, sir.

Q. And this being the next stop, in proper railroading that car would be next to the engine, wouldn't it?

A. Not necessarily so.

Q. Let's say it is put next to the engine?

A. All right.

Q. Now, you come by here and the engine stops just this side of the intersection?

A. Yes, sir.

Q. The switch is thrown?

A. Yes, sir.

Q. The engine pulls the car and puts it on the interchange track?

Mr. Monroe: We object, there is nothing said about any interchange track.

The Court: I suppose he has the right to ask that question, but it should be regarded as a hypothetical question.

Mr. Monroe: We except to the ruling of the Court.

Q. The interchange track wouldn't be on the right of way of the A. & V. Railroad, it couldn't be, there is not room between your track and the edge for an interchange track?

[fol. 281] A. No.

Q. So it would be on the property of the other railroad?

A. Yes, sir.

Q. And it wouldn't be right at this switch connection?

A. I don't know.

Q. It couldn't be?

A. I don't know.

Q. Assume now, Mr. Graham, that it is like all other railroads at terminals, the Jackson & Eastern has interchange tracks, then if you had to pull a freight train from Jackson you would uncouple the car that you wanted to take in, then carry in the yard engine into the exchange, then disconnect the car and come back with the yard engine?

Mr. Monroe: We object to him asking the witness how cars are handled in interchange tracks at all.

The Court: I overrule the objections.

Mr. Monroe: We except to the ruling of the Court.

Q. What are interchange tracks?

A. A place to put cars on other roads.

Q. They are to connect with the main line?

A. If you will let me answer I could tell you. They don't touch the main line of the other roads at an interchange at all.

Q. Don't it?

A. No, sir. They don't connect with the main line, our main line.

Q. You do with the Meridian & Memphis here at Meridian?

A. In the yard, in the yard limit.

Q. But your main line connects with the main line?

[fol. 282] A. We don't do it, it is in the yard, the main line crew don't have anything to do with it.

Q. At Newton, don't you touch the main line?

A. Neither do they touch ours.

Q. Your testimony is based on the idea that there will be no interchange track there, just one track, with reference to how you would handle cars from your train into the Jackson & Eastern?

A. I don't know, I couldn't know what the other railroad is going to do, there is only one switch described there.

Q. I am not talking about a switch?

A. It would be impossible to handle interchange successfully unless there was a track for it.

Q. Now, so when you testified that you would put the car in front of the engine and carry it to Pearson your statement was based on the idea that there would be but one track of the Jackson & Eastern?

A. That is all I know anything about.

Q. And your testimony was based on that?

A. That is all I know anything about.

Q. You testified something about Commerce Street, what Commerce Street were you talking about?

A. Commerce Street in Jackson.

Q. What did you say about Commerce Street?

A. I believe Mr. Monroe asked me if I was familiar with Commerce Street, and if trains stopped there.

Q. That is west of the River?

[fol. 283] A. Yes, sir.

Q. Mr. Graham, you don't know how long the concrete road has been built, you say?

A. Yes, sir.

Q. You have seen the water over the concrete road?

A. Yes, sir, but I don't know how long it has been there.

Q. You did see the water over the concrete road?

A. Yes, sir.

Q. Near the bridge?

A. Yes, sir.

Q. Have you observed the water over the concrete road up this way?

A. The only point I have seen the water over the concrete road was near our railroad.

Q. You hav-n't seen the water over the concrete road further out this way?

A. Not out this way, no, sir.

Q. Have you been on the ground there and observed the conditions around there, or did you just look at it from the train?

A. I have been out there in an automobile on the dirt road, but not at the time the water was up.

Q. You have been to Curran's Crossing in an automobile?

A. Yes, sir.

Q. Recently?

A. This year.

Q. But you didn't go there during the high water?

A. In 1902 I was there during the high water.

[fol. 284] Q. But this year you were not there during the high water?

A. No, sir.

Q. Have you examined the fill or the embankment of the Jackson & Eastern?

A. No, sir.

Q. Have you examined the openings in the embankment?

A. Only what I could see from the railroad.

Q. You don't know what openings they have?

A. Only what I see.

Q. You don't know how many openings they have allowed for?

A. Only one that I can see.

Q. Now, what is the relative height of the concrete road dump and the Jackson & Eastern?

A. I don't know sir.

Q. How far is Curran's Crossing from the first trestle on the A. & V. east?

A. Mr. Monroe asked me that question and I told him that I had never measured it, but it is something less than half a train length.

Q. How far is the trestle west of Curran's Crossing?

A. There is not much difference from the crossing to the bridge west and the one east, not very much.

Q. You said something about accidents happening at Curran's Crossing?

A. Yes, sir.

Q. Why were those accidents?

A. Because the people, because the man couldn't see.

[fol. 285] Q. Let's look at the map. Here is Curran's Crossing right here?

A. This is Curran's Crossing. (Ind.)

Q. Are there any buildings on the right of way of the A. & V. to obstruct the view?

A. No, sir.

Q. It is level track?

A. It is on a fill.

Q. Where is the engineer?

A. He can't see around the curve coming up to this crossing.

Q. That is going west?

A. Yes, sir, we are on the upper side, going west.

Q. You state to the Court when you get to trestle here going west that you can't see Curran's Crossing?

A. Going west?

Q. Yes?

A. No, sir, we can't see Curran's Crossing at all until we get pretty near on it.

Q. How far from it?

A. Four or five rail lengths.

Q. Can't your fireman see for you?

A. He can if he is on the look out, but he, as a rule is firing.

Q. There are no trees on the right of way?

A. Yes, sir, there are trees off the right of way.

Q. On the right of way?

A. No, sir.

Q. For 100 feet?

A. I don't know.

[fol. 286] Q. But there are no buildings on the right of way?

A. No, sir.

Q. How fast do you run trains across Curran's Crossing?

A. Going west about 50 miles an hour.

Q. And how fast coming east?

A. Well, we hardly get that fast after we get across Pearl River. We hardly run so fast. We run as fast as we can. I will say going west we run 50 miles an hour.

Q. Now, about this overflow in 1902. Has there been any change in the embankment of the A. & V. since that time?

A. Yes, sir.

Q. It has been heightened and widened?

A. It has been raised, I don't remember how wide it was at the time.

Q. It has been heightened?

A. Yes, sir.

Q. How much?

A. I suppose 8 or 10 feet.

Q. Now, are you a civil engineer?

A. No, sir.

Q. Do you know anything about how the waters come down Pearl River and how they go down the valley? Do you know the low places in that valley?

A. I have observed the river from the railroad.

Q. You have some trestles east of Curran's Crossing?

A. Yes, sir.

Q. These trestles, of course, are where there is some small stream?

[fol. 287] A. At some place in the swamp.

Q. Where the water runs?

A. Yes, sir.

Q. That water goes to Pearl River, doesn't it?

A. I don't know where it goes, it goes through the track south.

Q. It doesn't go to Pearl River north of your bridge?

A. No, sir.

Q. You don't know the relative height of the land in there to the east and north of the trestle?

A. It is low land. I have seen the water back over it nearly

to Pearson in high water time. All the way from Pearl River for three or four miles back. The water was up against our track clear down to Pearl River.

Q. With reference to the switching of cars and the time it would take, the time at this place would be the same as at any other point?

A. It would consume a great deal more time at this point?

Q. Why?

A. Because of the inconvenience of it.

Q. What do you mean by the inconveniences?

A. There are trestles on both sides of the crossing, and that highway crossing there.

Q. If your trains didn't run so fast there wouldn't be so many accidents?

A. I don't know about that. If we didn't run but 25 miles an hour it would probably be the same thing. If we have got to look out for their crossing and this junction it is going to be a little bit more than the average man can keep his eye on.

[fol. 288] Q. You tell the Court that you can't see that crossing until you are within how many car lengths?

A. A few lengths, I couldn't say how many. But it was a few rail lengths.

Q. But what did you say?

A. I said four or five.

Q. What is the length of a rail?

A. 50 feet.

Q. And that is 150 feet?

A. Well, about that, going west.

Redirect examination by Mr. Monroe, for the complainant:

Q. How does the height of the concrete road compare with the rails on the A. & V. Railroad?

A. It is a good deal lower, but I don't know how much lower it is.

Q. About how many feet?

A. Two or three feet or something like that.

Q. What kind of fill is that, the A. & V. fill?

A. It is dirt and slag, the solid fill.

Q. You stated that there were trees off the right of way, are they in sight of the right of way?

A. Going east in sight of the crossing.

(Witness excused.)

[fol. 289] J. C. STAMM, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. Mr. Stamm, give us your name, residence and occupation?

A. J. C. Stamm, Vicksburg, Mississippi, Superintendent of the A. & V. and the V. S. & P. Railroads.

Q. How long have you been connected with the A. & V. Railroad?
 A. Since 1885, 38 years.

Q. How long have you been Superintendent of the A. & V. Railroad?

A. I was appointed superintendent of the V. S. & P. March 16, 1918, and on November 15, 1919, I was made superintendent of both the A. & V. and the V. S. & P. and I have been superintendent since that time.

Q. Prior to the time you were made superintendent in 1919 how had you been connected with the A. & V.?

A. I was telegraph operator, dispatcher, chief dispatcher, train master. I was train master of the A. & V. for 11 years from 1907 to 1918.

Q. In the course of your employment with the A. & V. did you have occasion to traverse the line of the A. & V.?

A. As train master I traversed the line quite frequently. As superintendent I go over the line about once a month, sometimes oftener, sometimes not quite so often.

Q. Are you familiar with the location of the A. & V.'s line in the vicinity of Curran's Crossing?

A. Yes, sir.

Q. Are you familiar with the proposed junction point between the [fol. 290] Jackson & Eastern and the A. & V.?

A. Yes, sir.

Q. Is the A. & V. track at that point straight or on a curve?

A. It is on a curve.

Q. Will you state from your practical experience whether that fact would make it desirable as a point of junction?

A. The fact that it is on a curve would make it more dangerous, would increase the danger.

Q. Explain why, please?

A. The point at which this connection is desired is at Curran's Crossing and it is on a curve and the connection would be in such a position, in such a location that the engineer on the A. & V. would not be able to see his approach to this junction from either direction.

Q. Is this danger that you speak of, because of the fact that the vision of the engineer will be cut off, material?

A. It is material and would be dangerous.

Mr. Stone: We move to exclude the question and answer, because counsel put both words in the mouth of the witness.

Q. What is the nature of the danger, what is the extent of it?

A. The extent of the danger in making a connection at that location would be to endanger the main line of the A. & V. Railway.

Q. Is the A. & V. track at that point on a fill or on a level?

A. At that point it is on a fill.

Q. Please state to the Court whether that has any bearing on the desirability of that point for a junction?

[fol. 291] A. The fact that the connection is sought to be made on a fill would render the location very undesirable for train crews to

do any switching or perform their duties such as would be necessary there at a point of connection. The bank of the railroad would limit the space whereas there would be little room on either side of the track for the train men to safely perform their duties.

Q. What have you to say as to the combination of a curve and a fill as a location for a junction point?

A. The combination of a curve and a fill would render the connection more objectionable than if the connection was made on the natural level ground.

Q. Are there in the vicinity of this proposed junction any trestles on the A. & V. track?

A. There are two trestles located 1,300 feet apart of practically 400 feet each, making a distance of 650 feet either way from the point of proposed junction, which fact would make it more hazardous and cause great delay of the trains.

Q. Explain to the Court just why you say it would be more hazardous to have the connection at this point?

A. The natural position for the conduction- on the train is to ride in the caboose, he does most of his riding in the caboose.

Q. Where is the caboose?

A. It is at the rear of the train, the rear car. It is necessary that the conductor personally supervise the train crew therefore if you stop the train under the circumstances I mentioned a few minutes ago the conductor will necessarily have to go from the caboose up to [fol. 292] this junction to where the work is to be done, and to do that he will either have to go over the train or around by the side of the trestle, and for him to walk around the train will certainly increase the danger in him getting off the train and down around the trestle on the ground, and will also cause delay.

Q. Suppose there was water under the trestle?

A. Then he would have to go over the top of the train.

Q. How serious would you say this combination of circumstances would be, arising from the fact that the point of the proposed junction is on a curve, on a fill and between two trestles?

A. One of the most hazardous of these circumstances would arise from the fact that the signals of the train crew would have to be given from the south side of the track, the side away from the engineer, and then it will take time for them to cross over to the other side to give these signals. In other words their work would be on the north side of the track and the signals would have to be given from the south side; then, the other danger would be in the conductor getting from the caboose up to the point of junction, which is very hazardous; and the fact that the point of the proposed junction is on a curve, as I said -while ago, it obscures the vision of the engineer as he approaches this point of location, more especially is this so of the west bound trains.

Q. You have named the various elements of difficulties and dangers, now I would like for you to tell us how great those dangers are?

A. The greatest element of danger would be that every time this place was worked there would be a danger to the lives, danger of accidents, danger of damaging the property and the loss of lives, and all that aside from the loss of time, the loss of time on account of a connection at that point would be considerable. The close proximity of these two trestles would increase the time it would take to do that work in as much as the increase of time the conductor consumes in getting from the caboose to the head end of the train, and of course, the work could not be done so expediently as if the men remained on one side to do the work and passed the signals from the same side.

Q. Is there a public road crossing in that vicinity?

A. The proposed junction point is in the immediate vicinity of what is known as Curran's Crossing, it is a north and south crossing and has heavy traffic.

Q. Take into consideration the location of this crossing and the location of the proposed point of junction what have you to say?

A. In addition to the junction there is the crossing, Curran's Crossing and every movement made would create a danger.

Q. Would the presence of this highway crossing in the locality have any effect on the time consumed in switching at this point?

A. It would have this effect, that the movements back and forth would have to be watched, and if there was any delay in making this crossing in either direction the trains would have to be cut.

Q. If a train was to stop there any length of time would you have to cut the cars?

A. It would be necessary to cut the cars, and the cutting of cars [294] at any point always occasions considerable delay.

Q. Where would a train coming out of Jackson be with reference to Curran's Crossing, if it stopped its locomotive at the proposed junction?

A. If it stopped going east the train out of Jackson going east, if it stopped its locomotive with its head on this connection it would be across this crossing.

Q. Where is the proposed junction point with relation to the Pearl River bottom?

A. The proposed junction point is in Pearl River bottom.

Q. In the course of your connection with the Alabama & Vicksburg Railroad have you had occasion to observe the behavior and conduct of Pearl River?

A. Since 1907 I have seen Pearl River out of its banks many times. As a matter of fact practically every spring freshet puts the water out of the banks. The rain fall in the spring of the year.

Q. To what extent does Pearl River normally cover, the adjacent land to the east when it is in flood stage?

A. Do you mean how far the water extends?

Q. How far up the track of the A. & V. from Pearl River bridge have you seen the water?

A. The furthest that I have seen the water out of Pearl River is almost, if not entirely, to the 92 mile post which is three miles east of Curran's Crossing.

Q. Are you familiar with the concrete road which was built along there several years ago, north of the A. & V. and east of Pearl [fol. 295] River?

A. Yes, sir, I know the location of the concrete road.

Q. How does the surface of the concrete road compare with the base of the rail of the A. & V.

A. I would say that the difference is about, well, between six and seven feet.

Q. Which is the highest?

A. The base rail on the A. & V. is the highest.

Q. Have you seen the waters of Pearl River over the surface of the concrete road?

A. I have seen the water over the concrete road once or twice.

Q. When was that concrete road constructed, approximately?

A. I am not sure of that, but I think in the latter part of 1916, or the early part of 1917.

Q. To your knowledge has the concrete road had trouble with the waters of Pearl River?

A. In the latter part of 1912 or the early part of 1922 my recollection is that they had some trouble with the high water there at Curran's Crossing.

Q. On the concrete road?

A. I said on the concrete road, but I want to say in explanation there that when I said concrete road I referred to the road towards Brandon.

Q. What was the nature of the trouble?

A. There was a danger of a washout, it appeared to me.

Q. From your observation and information as a railroad man is it or is it not essential that the track of the railroad be built above [fol. 296] high water?

A. It is absolutely essential for the continual and uninterrupted operations.

Q. Are you familiar with the proposed line of construction of the Jackson & Eastern, map, Exhibit "F," lying on the table before you?

A. Yes, sir, as to where the right of way is to be established.

Q. It begins at the proposed junction point and runs northeast?

A. Yes, sir.

Q. From your observation of Pearl River, its floods, if that embankment is built on that line what will be the effect of it upon the Pearl River floods, and in turn the effect of the floods on the A. & V. embankment?

A. In the vicinity of the Junction, between the 92 and 93 mile post and Pearl River bridge the A. & V. has about 2,300 feet of opening without undue obstructions. The overflow waters of Pearl River scatter over that and pass out through the openings without damaging our A. & V. track at its present location. If the embankment as proposed by the Jackson & Eastern is built the tendency would be to confine the waters or restrict them and force them out with considerable velocity against the banks of the A. & V. down there at Curran's Crossing and down at the trestle, Farish Bridge 650 or 750 feet west of the point of junction, also to Pearl River which is 1,700 feet further west. The volume of water, especially through

Farish Bridge would be increased greatly and the tendency to increase the volume of water in that locality would also increase the height of the water.

[fol. 297] Q. In case the height of the water against the A. & V. embankment was increased considerably, what effect would that have?

A. It would endanger the embankment, and there would be a probability of great damage to the trestle at Farish Bridge and the Bridge over Pearl River.

Q. From your knowledge of Pearl River based on your observation for these many years how serious would you consider that menace under the circumstances you have just detailed?

A. It would be a very serious menace to the uninterrupted operations of the Alabama & Vicksburg Railroad. If the bank was damaged or if the trestle was damaged to the extent that it was unsafe to operate over the road we would naturally be tied up.

Q. What do you mean by being tied up?

A. We would be unable to operate our trains over that part of the line.

Q. Has the A. & V. a single track or a double track?

A. It is a single track line.

Q. Has it any branches?

A. It has no branches.

Q. The fact of its being a single track and having no branches, would that increase the seriousness of the damage resulting from the bank getting in bad in any locality?

A. Yes, sir. There is only one line there and there is no opportunity for assistance until they could repair any damage to the track.

Q. Are you familiar with the character of the traffic of the A. & V.?

[fol. 298] A. Yes, sir.

Q. Can you tell us what proportion of its trains which operate over this proposed junction point is engaged in interstate commerce?

A. All the passenger trains are engaged in handling interstate commerce and all the freight trains.

Q. Are any of the trains engaged in carrying United States mail?

A. We operate four passenger trains each way every day, and each one of these passenger trains carry United States mail. Three each way carry mail cars and the other two carry mail.

Q. What are the various kind of trains that operate over this piece of road?

A. We operate passenger trains, freight trains, through freight trains and local freight trains, and extra trains, work trains and sections of passenger trains if the occasion requires it.

Q. What have you to say as to the adequacy of the facilities of the road from Pearson to Jackson as compared with the volume of traffic?

A. At his time our facilities are seriously taxed in handling our business without delay.

Q. I believe you stated that you were chief dispatcher in Vicksburg?

A. Yes, sir, in Vicksburg for two years or two and a half.

Q. Did you get any knowledge of the difficulties of handling trains over a congested track while you were chief dispatcher?

A. Yes, sir.

[fol. 299] Q. As a train man would you say that you had an intimate knowledge of those difficulties?

A. I did acquire a knowledge of all these things in putting train orders through, in performing my duties as a chief dispatcher. I had to watch my own operations and see that the trains were transported without unnecessary or unreasonable delay. As dispatcher, chief dispatcher, trains master and superintendent I feel that I have a certain competency in passing on the difficulties of the particular piece of track in question. And as I have said before this piece of track is already badly congested.

Q. Will you tell us approximately how far apart the trains are in time, on an average?

A. From 6:30 in the morning until 7:55 or 8:00 o'clock at night we actually have a scheduled train over this piece of track every 67 minutes.

Q. In addition to the scheduled trains what other trains would you have?

A. We operate extra trains, we operate work trains, we operate special passenger trains.

Q. I would like for you to give the Jundge some concrete illustration of the difficulties in question in moving trains out of Jackson to Pearson?

A. Well, say that you are attempting to move an east bound freight trains against a west bound passenger train which is late on the schedule the dispatcher has first to figure the time that the west bound passenger train has to come from Pearson before he can determine whether this freight train can leave Jackson in time to [fol. 300] make Pearson against the passenger train. He has got to make due allowances before he can consider the freight train as some delay might occur from the time he started until he is out of the City of Jackson. We pass over a couple of streets, by the I. C. cars and 8 or 9 street cars, then Pearl River bridge, and the freight train leave Jackson in ample time to make Pearson against the passenger train because he has got to get there or meet the passenger train on the main line. Under ordinary circumstances the dispatcher will hardly ever consider a freight train under 40 minutes, because in addition to the other difficulties he has got to clear this passenger train at Pearson according to operating rules which is five minutes.

Q. In case this junction is established at the proposed point what would be the effect upon the time consumed by the trains, for instance the freight train to which you refer?

A. If this junction point was established and there was work to be done there in addition to the delays which I have enumerated which might occur in Jackson, it would be necessary for him to do this work, and that would mean that it would be impossible for him to leave Jackson until the passenger train got there.

Q. Even if he didn't have special work at the point of junction would there be any increase in the delay because of the junction point?

A. If the junction point was established there in this locality and the Jackson & Eastern occupied at any time the main line of the A. & V. it would be necessary to establish at this junction a register station which would force the trains to stop there and register and [fol. 301] if they stopped to register it would mean just that much more delay.

Q. Are you familiar with the statements made in the condemnation proceedings by the Jackson & Eastern?

A. Yes, sir.

Q. Have you read the condemnation petition?

A. Yes, sir.

Q. And considered it?

A. Very carefully.

Q. Is your testimony or not predicated upon the statements made therein?

A. My testimony is predicated on the statements made therein.

Mr. Stone: We object, because that is calling on the witness to give a legal construction of the instrument.

The Court: I think Mr. Stamm has qualified to answer the question, and I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

Q. Have you examined the description of the lands sought to be condemned?

A. Yes, sir.

Q. What portion of the property of the A. & V. have you identified that land which is described as being?

A. A part of the main line of the Alabama & Vicksburg Railway.

Mr. Stone: We object to the question and answer and move to strike them from the record. He can't construe the paper.

The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

[fol. 302] Q. Is that piece of the main line of the A. & V., is it or is it not essential to the continuous operations of the A. & V.?

A. It is absolutely essential to the continuous operations of their road.

Q. Is it essential to the continuous operations of the road?

A. It is.

Q. To get back to the particular difficulties of operating between Jackson and Pearson. Has there, to your knowledge, been any delays at any time in the operation of trains over that piece of track under present conditions?

A. Yes, we have more or less delays in handling the traffic between these two points.

Q. Is there any telegraph station at the proposed point of junction?

A. There is no building of any kind.

Q. Have you examined, Mr. Stamm, the proposed method of interchange which is described in the condemnation proceedings? Part of which reads as follows: "The said connection is to be made as shown by said diagram Exhibit "A" hereto and is to be located so that the point of the lefthand frog will be 1,867 feet east of the first block signal semaphore situated on the main line of the Alabama & Vicksburg Railway Company west of Curran's Crossing and east of Pearl River; the said turnout to be operated so that cars may be interchanged between said Alabama & Vicksburg Railway Company and this applicant, and said turnout to be protected by a lock, the main line of the said Alabama & Vicksburg Railway Company to be further protected by a de-rail switch which is to be placed on the rail of the applicant at a point 100 feet beyond the point of [fol. 303] the frog of the given turnout on the north rail of the applicant, the said de-rail switch to be kept locked and open only when in use for the interchange of cars.

A. Yes, sir.

Q. How does the proposed method of the interchange of trains described compare with the methods of interchange with which you are familiar?

A. It does not compare in similarity to any interchange of trains that I remember of.

Mr. Stone: We object to that. There are no allegations in the bill about that.

The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

Q. Please explain more fully your last answer.

Mr. Stone: We object, he has not qualified as an expert along the lines he is questioned.

The Court: I think he is qualified to answer the question.

Mr. Stone: We except to the ruling of the Court.

Q. Mr. Stamm, how many years did you say you had been in the railroad business?

A. 38.

Q. During the course of your experience as a railroad man, as superintendent, train master, chief dispatcher and otherwise have you had occasion to become familiar with the methods of interchange employed between railroads?

A. Yes, sir.

[fol. 304] Do you consider yourself as answering as an expert on the method of interchange?

A. Yes, sir, I do.

Mr. Stone: It is not a question as to how he considers he is answering the questions.

Q. Have you been in any other business in your whole life except railroading?

A. I have not.

Q. Have you gained any knowledge as to the method of interchange between railroads?

A. Yes, sir, as train master, the position I occupied for 11 years, one of my most constant duties was the supervising of the interchange business between the A. & V. and its connecting lines.

The Court: I think that is sufficient qualifications.

By Mr. Neville:

Q. As chief dispatcher you were not in this vicinity, the vicinity of this junction, you were at Vicksburg?

A. I was at Vicksburg.

Q. You didn't go out and superintend the interchange traffic?

A. I will say that in my two and a half years experience as chief dispatcher I put into use the interchange between two of our heaviest connecting points, Vicksburg and Shreveport.

Q. You didn't do any of the constructing work?

A. I didn't construct the tracks, I put them into use after they had been constructed and ready for service.

By Mr. Monroe:

[fol. 305] Q. Will you please explain more fully your answer made to the above question indicated in the paragraph I read to you with reference to the proposed connection?

A. The method outlined in the condemnation proceedings is that the Jackson & Eastern are simply connecting with our line for the purpose of interchange of traffic, their business to be moved by the A. & V., the connection to be made by a single track coming into the A. & V.'s main line. The interchange of business between lines requires a separate track which is set aside for nothing but the purpose of the interchange of business between the two lines. If that business is heavy it requires there shall be two tracks, one which the A. & V. would deliver their cars for the Jackson & Eastern, and also one on which they would deliver their cars for the A. & V. The interchange of business on the connection proposed is not a practical one, it is rarely ever the case that a connecting line delivers to its connection or has delivered to it a cut of cars when they can all be moved, that comes up to inspection, that all the cars on the receiving line can be moved and under these circumstances it is the practice and custom to set these cars back there on the line that has delivered them. In other words, we don't want in our possession anything that don't belong to us or that is not ready to move. This connection as proposed comes into our main line out there between two stations and if the Jackson & Eastern have anything for us they shift it on our main line and we come along and we have to switch the actual cars out, if there is a car that can't be [fol. 306] taken we have to switch it back to the Jackson & Eastern, if for any reason the car is not ready to move.

Mr. Stone: We move to exclude the answer because there is no allegations in the bill touching the matter testified to by the witness.

The Court: I overrule the objections.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Stamm, you have points of intersection with other railroads in the state, do you not?

A. Yes, sir, we have connections at Vicksburg, connections at Jackson and we have a connection at Newton and connections at Meridian.

Q. In the case of these other connections with your road, have they any right, title or interest in the main line track of the A. & V. to your knowledge?

Mr. Stone: We object to that, because the Jackson & Eastern has no right to occupy the main line of the A. & V.

The Court: I have already ruled on that question.

Mr. Stone: We except to the ruling of the Court.

Witness: No.

Q. Did you ever hear of such a junction?

Mr. Stone: We object.

The Court: I sustain the objection.

Q. In the case of your connection at Newton with the Gulf, Mobile & Northern do the locomotives of the G. M. & N. ever get on the main line of the A. & V.

[fol. 307] Mr. Neville: We object to that, because under the condemnation proceedings the Jackson & Eastern have no such right with reference to the A. & V.

The Court: I overrule your objections.

Mr. Neville: We except to the ruling of the Court.

A. It is not the case at Newton.

Q. Do the locomotive and trains of the A. & V. ever go on the main line of the G. M. & N.?

Mr. Neville: We object to the question.

The Court: I overrule your objection.

Mr. Neville: We except to the ruling of the Court.

A. No, sir.

Q. I will ask you the same question about the interchange with the Illinois Central at Jackson. Does the I. C. locomotives and trains go on the main line of the A. & V.?

Mr. Stone: We make our same objection to this question as to similar questions.

The Court: And I will overrule your objections.

Mr. Stone: We except to the ruling of the Court.

A. Our passengers at Jackson are interchanged at Union Station. The I. C. in pulling the A. & V. interchange uses a short portion of the A. & V. passenger loop, and the A. & V. in turns pulls over the west end of the I. C. interchange track, but it does not touch the I. C. main line.

Q. What is the situation at Vicksburg with reference to interchange with the Y. & M. V.?

Mr. Stone: We make the same objections.

[fol. 308] The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

A. The situation with the Y. & M. V. with reference to its interchange between the two lines is down in the yards, but the engines do not go on the Y. & M. V.'s tracks to make their deliveries.

Q. Have you had any experience with de-rails and locks as a method of protection against a switch connection, similar in character to the one described in this proposed junction?

A. It is not clear in my mind from reading the condemnation proceedings what kind of de-rail is to be installed. But any kind that depends on the human agency for its operations has proven inefficient.

Mr. Stone: We register our objection to the question and answer. There is no allegation in the bill touching the matter testified about. Their allegation is that it is a dangerous location on account of the curve and so we object to this testimony.

The Court: I overrule the objections.

Mr. Stone: We except to the ruling of the Court.

Cross-examination by Mr. Stone, for the defendant:

Q. Mr. Stamm, you said that your testimony in this case is predicated upon your interpretation of the application for eminent domain, that is the way I understood it, is that correct?

A. Yes, sir.

Mr. Monroe: What testimony?

Mr. Stone: I will come to it.

[fol. 309] Q. And your interpretation of that is that there is to be but one line, one track on the Jackson & Eastern Railroad line; that there will be no yard, no interchange tracks, is that true?

A. Mr. Stone, I don't go that far in my interpretations. I am interpreting the proceedings as it reads.

Q. As you understand it calls for only one track?

A. One track.

Q. As a matter of fact, if there was but one track and that track would be the main line, then when an engine running from Sebastopol into this junction with a train of cars for interchange it would have no way to get the cars out of the way so it could go back to Sebastopol?

A. No.

Q. It couldn't make the interchange of cars at all?

A. Without it went on the A. & V. and delivered them thereon.

Q. Now, suppose this is simply a switching connection that we are seeking to get a switch connection between the Jackson & Eastern Railroad and the Alabama & Vicksburg Railroad, then it would be the duty of the junior railroad to provide the necessary tracks in order to be able to interchange the cars?

Mr. Monroe: We object, as that is a legal question.

The Court: I overrule the objections.

Mr. Monroe: We except to the ruling of the Court.

A. Yes.

Q. So that regardless of your construction of this application for eminent domain of the Jackson & Eastern Railroad, from your experience and observation in handling railroad matters it would be [fol. 310] the duty of the junior railroad to prepare all of the exchange or interchange facilities for making and interchanging traffic at that point?

Mr. Monroe: We make the same objections as before.

The Court: I overrule the objections.

Mr. Monroe: We except to the ruling of the Court.

Q. I will ask you if that is not the custom? In order to obtain the proper facilities for the interchange of cars with the Jackson & Eastern at that location it would be necessary to have sufficient tracks to handle the business and under the customs the junior railroad would have to construct these tracks, wouldn't it?

Mr. Monroe: We object unless he shows what he means by custom.

The Court: Let him answer.

Q. What is the custom in Mississippi in connecting a junior line with a senior line, who provides the proper facilities for the interchange of cars?

A. I think that is the custom. That is the only method under which they would consent to interchange traffic.

Q. How about the construction of the Meridian & Memphis?

A. I am not familiar with it.

Q. You don't know about that?

A. No, sir.

Q. If the Jackson & Eastern should construct sufficient facilities for the interchange of traffic if this connection should be put in, then these difficulties that you have been testifying about would be done away with?

[fol. 311] A. I couldn't undertake to answer that question unless the facilities they are going to provide were described.

Q. I said sufficient?

Mr. Monroe: And we object to him answering the question.

The Court: I will overrule the objection, as he asked if there be sufficient facilities.

Mr. Monroe: We except to the ruling of the Court.

Q. If the Jackson & Eastern provides sufficient facilities for the interchange of cars at this point would the difficulties about which you have been testifying be done away with?

A. The difficulties in *in* interchanging traffic, so far as the traffic was concerned would be done away with. But the undesirable location would not be done away with.

Q. But before we come to that. Is it not the custom in the territory where you have been doing railroading for a railroad to refuse to accept for interchange any cars or traffic that does not come in proper shape so transfer can be properly made?

A. It is a custom not to accept cars of that nature, but that does not mean that cars of that nature do not come temporarily into our possession. We have got to look over this interchange first to see what it is to be able to say what is right and proper to accept, then these cars that are proper to accept are physically delivered to our track.

Q. So that unless there are proper facilities for the interchange of traffic you reject the traffic?

A. If there is not proper facilities for traffic we can't handle it.

[fol. 312] Q. Now, we will pass on from that and come to the dangers you were speaking about. In considering these dangers you spoke of breaking up the trains and switching cars. How close is this connection to Jackson?

A. Let me think a minute.

Q. That is all right?

A. From the yard limit board of Jackson?

Q. What is the distance from the board to this point of junction?

A. Approximately 3,000 feet. Let me answer that question this way, that is the extreme end of the east end of the yard limit board. Our main yard being in Jackson further west which is a mile and a half from the yard limit board.

Q. So that would put your main yard how far from this intended connection?

A. A mile and a half.

Q. Mr. Stamm, wouldn't good railroading require the Alabama & Vicksburg in case this connection is made instead of having the road engines do that switching have the switch engines from the yard come out there and do the switching?

A. No, I don't think so, Mr. Stone. You have got to bear in mind that you have got to have a yard limit somewhere, and if you extend the yard limit 3,000 feet you are going to have a pretty big yard.

Q. Is the yard there as large as it is in Meridian?

A. I don't know—

Q. What is the western limit to the Meridian yard?

A. It is about a mile, possibly two from 23rd Avenue.

[fol. 313] Q. That is the western limit. What is the eastern limit of the yard in Meridian?

A. I think it is out here about the Acme Lumber Company.

Q. That would make the yard in Meridian three miles or more?

A. Yes, sir.

Mr. Monroe: I have let this go on without objecting to it. I think it will show that they are trying to get the benefit of our yard and our switch engines.

The Court: Let us see how far they are going with it.

Mr. Monroe: I except to the ruling of the Court.

By Mr. Stone:

Q. I am asking you now from the standpoint of good railroading if the connection is made at this point if it would not be better to extend your yard on out there and make the interchange there with the switch engines so as to avoid all these dangers that you have been testifying about of flagging the crossings and stopping the cars?

A. I will answer that from a standpoint of good railroading, no.

Q. If you were to extend your yards to this point all you would have to do would to bring your board over a sufficient distance east of this connection to insure the proper protection of the switch engines in this matter? If you moved your board over there then the switch engines could come in there and bring out these trains to deliver to the Jackson & Eastern without the necessity of breaking the long trains and without the necessity of stopping the cars, and it would do away with the danger of flagging the engineer and giving him the signals that have been testified about?

[fol. 314] A. Theoretically your idea is right about the yard limit board, but it is not good railroading. I want to point out to you that your theory is wrong. Our yard engines move in the prescribed yard limits, but their movements are irregular on account of the regularly scheduled trains. Our yards are a system of tracks where we do our switching, and the switch engines when they enter the main line tracks are in such position that they can get off on short notice in order to be out of the way of the scheduled trains. If the yard limit was extended the distance you mentioned it would be necessary for our switch engines to operate on a single track for a distance of 4,000 feet without any switch, and it would not be possible for them to get out of the way of the fast trains.

Q. Isn't it a fact that you could give regular orders to carry the trains out there?

A. I don't believe it could be done. We have a schedule time table which is the basis of our operations, and we couldn't select any 24 hours to send our engines out there when the Jackson & Eastern was working. The Jackson & Eastern being a short line of course would do its work in the daylight period.

Q. Without mentioning the daylight period, don't you know of any time during the 24 hours that the switch engines could go out there and work that connection?

A. And leave by schedule it couldn't be done.

Q. Don't you have to change your schedule with the increase of traffic?

A. We have to regulate the schedule to the increased traffic and [fol. 315] with due respect to the proper service to the public.

Q. If you extend the yard it will not be so great as the Meridian yard is now?

A. The mileage would not be so great, but you are comparing this with the Meridian yards where we have numerous tracks, and this will be only one track. It is not the same in Meridian as it is at Pearl River Bridge. If a switch engine was on there without train orders it would have the main line all the way to Pearson for the time it was out there and the dispatcher would be powerless to get that engine off for a scheduled train.

Q. But they could move and move under the directions of the dispatcher?

A. There is a vast difference in switch engines and regularly scheduled trains. The only way that railroad companies can operate safely is by the time table, by set rules, which are understood.

Q. For the switch engines to come out there from the yards, that would obviate these dangers; it would obviate these dangers of switching back and forth across Curran's Crossing?

A. You say these dangers?

Q. I am talking about the dangers coming to the switchmen in connection with this proposed junction point?

Mr. Monroe: What dangers, be fair to the man.

Mr. Stone: If I am not far he can call my attention to it, so don't interfere with us, Mr. Monroe.

Mr. Monroe: Specify what dangers you refer to.

By Mr. Stone:

[fol. 316] Q. This movement of trains with switch engines would obviate the dangers testified about this morning of signalling the engineer on long trains and the conductor coming down the caboose and walking up there to be there in order to control his work; it would obviate a certain amount of the delay to the movements of the train mentioned this morning?

A. The same movements would have to be gone through with.

Q. There would be no caboose for the conductor to come back off of?

A. No.

Q. There would be no conductor on there?

A. No.

Q. The only thing on the train would be the cars to be interchanged?

A. There would be a number of men, the train crew, conductor and two helpers. Of course, the only cars he would take would be the cars to be delivered to the J. & E.

Q. And all he would bring away would be those to be delivered to the A. & V.?

A. Naturally so.

Q. Mr. Stamm, you testified about this water backing up and about the effect the building of the Jackson & Eastern embankment would have on the water. Do you know how many openings or conduits for water to pass through are planned in this Jackson & Eastern embankment?

A. I don't know what is planned, but I know how many openings there is in the bank so far as I can see.

[fol. 317] Q. The bank is built only a little ways?

A. Yes, sir.

Q. Now, of course, the effect that the Jackson & Eastern embankment would have on the water would depend on the number of openings in the embankment?

A. And the height of the embankment.

Q. You don't know how high the bank is going to be after it goes away from the A. & V. right of way?

A. No, sir.

Q. Do you know how much water goes through the openings now in the concrete public highway?

A. How much water goes through the openings?

Q. The various openings?

A. I do not know.

Q. Do you know how much water passes through the concrete roadway?

A. No, sir.

Q. Do you know whether the plans fixing the construction of this railroad leave enough openings for the water to pass through or not?

A. I am ignorant of your plans.

Q. Now, you testified while ago that the continued operations of a railroad required that the railroad be built above high water?

A. Yes, sir.

Q. Is the A. & V. built above high water?

A. Above the highest we have had.

Q. Your road is operated across many streams?

[fol. 318] A. Yes, sir.

Q. It is across the Mississippi River at Vicksburg?

A. Yes, sir.

Q. And the water runs over your track in several places in times of high water?

A. No, you have that wrong. Not every time, but we have had some washouts on the V. S. & P.

Q. You have operated your trains when the water was knee deep?

A. We operate the trains through a considerable amount of water.

Q. You don't mean to state that the railroad track in order to do business would have, at all times, to be clear above the high water?

A. I testified, it is my recollection, that it would put us out of business if the bank was washed out at these trestles. We have operated the west end of the A. & V. under a considerable depth of water, but there was no current, in this case the conditions would not be similar, because the water over our track would be swifter.

Q. I am not asking you with reference to your track. I understood your statement was with reference to our track, that good railroading required that our track be above high water?

A. The conditions are the same.

Q. Of course, that refers to the A. & V.?

A. I would say that they should be built completely out of danger of inundation if they want to continue in business when the water comes up.

Q. Do you know whether or not these two highways are above the [fol. 319] high water, these two high ways in the vicinity of this junction?

A. The concrete highway?

Q. I mean the concrete high way and the high way known as the Fannin Road?

A. I know what you mean.

Q. Of your own knowledge do you know if they are above the high water?

A. Of my own knowledge I don't know their elevation, I can't answer except to one location.

Q. Where is that location?

A. That location is not of my own knowledge because I did not measure it.

Q. Then you wouldn't be speaking of your own knowledge?

A. I never measured it.

Q. Then you don't know whether either one of the high ways are above high water?

A. The water overflows at one point, right near the bridge.

Q. You are speaking of the point where you have seen it under water?

A. Yes, sir.

Q. And that is near the bridge?

A. Yes, sir.

Q. Will you look here on the map that has been introduced in evidence?

A. I will.

Q. The concrete road goes this way (Ind.), and the Fannin road [fol. 320] runs up this way (Ind.)?

A. I have seen the water over the road there at the concrete bridge.

Q. Mr. Stamm, will you take this as a point of junction, (Ind.) this Fannin road runs off from the road from Jackson to Meridian and turns to the left and goes north, about a mile from the River?

A. I am not familiar with this road.

Q. With the Fannin road?

A. No.

Q. You don't mean to say that you ever saw the Fannin Road overflowed at all?

Mr. Monroe: Let him mark the map where the water goes over the road.

Q. Take this as the Fannin Road, you have never seen any water overflow the Fannin Road at all?

A. The Fannin Road, I know nothing about that.

Q. Will you please show me on this map where you saw the water overflow the concrete road coming out from Jackson and leading to Meridian, coming east?

A. Where is this concrete road?

Q. This is the concrete road. (Ind.)

A. Yes, sir, I have seen the water overflow it here near the concrete bridge.

Mr. Monroe: Will you mark that road "X"?

A. Sure, I will mark it.

By Mr. Stone:

[fol. 321] Q. Where else have you seen it overflowed?

A. To the best of my recollection it was somewhere right along here.

Mr. Monroe: Will you mark that place with some letter?

A. I am marking it with a "Y."

By Mr. Stone.

Q. So these are the two points where you saw it overflowed?

A. These are the points, Mr. Stone, just west of the concrete bridge. I can't fix the exact location.

Q. How deep was the water overflowed?

A. I don't know.

Q. Do you know anything about how deep it was, whether it was foot deep?

A. I will say it was several inches deep, but I didn't measure it and don't know exactly how deep it was. I made no minute examination of the flow of the water.

Q. Referring back to the switch engines. I understood you to say while ago that you didn't know of an instance where the switch engine operated on the main line of a road. I will ask you to refresh your recollection a little bit and tell us whether or not here at Meridian the switch engine runs west on the main line of the A. & V. to the M. & M. interchange and deliver cars to the M. & M. and bring M. & M. cars back and deliver to the A. & V.?

A. With reference to my answering that question, I stated in answer to a question by Mr. Monroe by giving him a case at Jackson where the I. C. engines come out on the passenger loop for the purpose of pulling interchange traffic on it. In reference to the switch engine movement in the Meridian yard, the M. & M. connection is directly into the A. & V. Railway's main line, it is true, but that is in the yard limit that it occupies that A. & V. main line.

Q. Then, so far as the main line is concerned you would have a different situation if you put your yard limit board just beyond the point of this intersection at Jackson?

A. Yes, we would have a different situation, the conditions are not similar.

Q. I say so far as concerns the switch engines?

A. If we moved the yard limit board east of the proposed point of connection the conditions that you deduct there would not be similar to the one at Meridian. And this is a perfectly safe movement. The M. & M. connection at Meridian with the A. & V. main line is

not 200 feet from a switch track, a half a dozen of them, and a switch engine on there could get off on a few seconds' notice.

Q. Have you a telegraph station there?

A. No, sir.

Q. And no register office there?

A. None, because there is no engine using that except from the Meridian yards.

Q. If you move your board at Jackson out beyond this point of intersection the conditions would be the same?

A. No, sir, I have answered that before.

Q. All right. If the board was moved out beyond this point then this traffic could be handled with A. & V. switch engines [fol. 323] just like they are handled at Meridian?

A. We wouldn't allow the switch engines to operate on the main line for this distance out from Jackson, this being out of the yard limit and not safe, as I have explained to you before.

Q. This is not so far as it is in the Meridian yard?

A. It may not be so far, but I pointed out to you that the conditions are not similar. A switch engine would tie up the track from Jackson to Pearson.

Q. You have the block signal system?

A. Yes, we have the block signals.

Q. Isn't it a fact, that your engines in making the interchange of cars at Meridian leaves the main line of the A. & V. and goes down in the interchange tracks to interchange cars from the M. & M. to the A. & V.?

A. I can only answer that from hearsay.

Q. Don't you manage that?

A. I will explain that. The Meridian yard is under the control of a board, under a board of control of which I am a member, but so far as to the method of interchange with the M. & M. or how far the switch engines go down on the switch, I have no personal knowledge.

Q. But your board does control that?

A. The interchange with the M. & M. has never been brought up and what arrangement is effective I don't know.

Redirect examination by Mr. Monroe, for the complainant:

Q. Mr. Stamm, some reference was made to the operations of the V. S. & P. under crevasses. I want to ask you one question when you [fol. 324] operate a train under water does it have any effect on the movement and the safety of the train?

A. We operate under water only up to a certain depth and then we go out of business until the water recedes. If we operate under water it is done with extra caution.

Q. Does it interfere with the business?

A. Very seriously.

Q. I would like for you to state, please whether from your experience as a railroad superintendent, train master and dispatcher the suggestion that the yard limit board at Jackson be extended far

enough to include this point of junction, far enough east, whether it is a feasible and practical suggestion?

A. In my opinion it is not a practical and feasible one.

Q. I would like for you to explain that to this Court, fully?

A. The yard limit board at present is on Pearl River Bridge, it is set just far enough east of the last yard track to insure the switch engines reasonable protection against incoming trains so that you will not endanger the safety of the engines, the switch engine movements. The site of this junction, this proposed connection is a distance of approximately 3,900 feet from the yard limit board and in order to get the protection of the yard limit it would be necessary to set that yard board further east a reasonable distance.

Q. East of what?

A. East of the proposed point of connection.

Q. Approximately what distance east should it be placed?

A. It should be three or four hundred feet. I will say five hundred feet. 325] feet to insure the protection of the engines and that would be a distance of 4,400 feet on the main line single track heavily congested where switch engines would operate under the yard rule and would move without special train orders and the dispatcher would have no control or know anything about the movements. When he arrives at this point of connection he would set the flag as far east as the west switch at Pearson which is a distance of about three miles. It would be unfeasible and unpractical and would run chance of de-railment at all times, and the proper officer would be unable to get in immediate touch with the situation.

Q. Would these culverts have any bearing on the matter, Mr. Stamm?

A. These two bridges?

Q. The trestles, I should have said?

A. They would have considerable bearing in reference to the switch train operations. We would first have Pearl River bridge, which is 800 feet, next would be Farish Bridge which is 400 feet, making a total of 1,200 feet of trestle in there, and further east a distance of 650 feet there is another trestle 400 feet long, which last trestle would have a bearing on the yard board if it was put out there, it would influence the location and would mean that we would have to set the yard board at the end of the trestle.

Q. The eastern trestle?

A. Yes, sir.

Q. Then what distance would it be necessary to move the yard board on this single line track?

fol. 326] A. I am speaking here from the diagram, a mile and 1/10.

Q. Now, what is the distance from the yard board in Meridian to the first place where you have two tracks instead of one?

A. The distance from the yard limit board to the first yard track isn't over five or six hundred feet.

Q. Are the two conditions under these circumstances similar at all?

A. No, sir, they are not similar at all. The yard limit board at Meridian is very close to the yard tracks and it would only require

a few minutes for the switch engine to get to the yard track. The situation in so far as the proposed connection at Curran's Crossing would mean that the switch engine would have to run a distance of a mile and two-tenths before it could clear the A. & V. main line.

Q. If you put your yard board at the point you indicated east of the east trestle of the proposed junction what would be the effect upon the time required to move a train from Jackson to Pearson?

A. The effect would be to considerably delay them, and second class trains that have to keep out of the way of scheduled trains would have to depend on the time between two trains and there still might be danger of any movements on the main line when these switch engines were out on the main line doing this switching with no record of their movements in the dispatcher's office.

Q. Would any railroad seriously consider the suggestion of moving its yard board under the suggestions made?

[fol. 327] Mr. Stone: We object to what any railroad would consider.

The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

A. I don't think so. I don't think any railroad would extend the yard board under the circumstances outlined here.

Q. And under the conditions existing at this locality?

A. Yes, sir.

Q. Is Jackson a terminal of the A. & V.?

A. Jackson is a semi-terminal for local freight trains, it is not a terminal for scheduled trains.

Q. Is Meridian a terminal of the A. & V.?

A. Yes, sir.

Q. Is there any difference between the handling of terminals, the handling of yards at terminals and the handling of yards at sections in the middle of the line, in so far as the handling of trains, the time they are due and the time of their departure, scheduled trains are concerned?

A. It is considerably more essential that the yard man be cognizant of the movement of other trains when it is for a terminal yard, to know of the arrival of these trains in transit and have room for them. The first thing is the train in transit must be passed through the yard without delay.

Q. State, if when it has come in the yard and the crews have performed the necessary switching for its coming into the yard, what is done?

A. If the train departs from the terminal the yard crews have to prepare to switch this train and get it lined up on the adjacent track, [fol. 328] which maybe two orders before that train leaves the terminal. We all know that trains have regular orders after they are represented on the time table, but that is not the case in yards where switch engines have to keep out of the way of other trains and still perform their necessary duties. But for this piece of road out from Jackson over Pearl River Bridge for a distance of a mile and two-

tenths, single track road, there is no place where a switch engine could get out of the way of trains that are due there, and which may be late, which fact would simply mean that the switch engine could not move in there on that long section of main line until the regular and other trains had arrived.

Q. What bearing would the movement just stated have upon the suggestion that the yard board be set out beyond this east trestle?

A. It would have this bearing. It would retard the movement of all of our trains, the switch engines, if they should go out there would set the block signals, and it would increase the time of the movement of trains to a considerable extent. All the trains would have to slow their movement inside the yard limit.

Q. Mr. Stamm, you suggested an evil or disease as a result of putting a junction at the proposed point. Mr. Stone suggested that you move the yard board out to the east of the trestle. I would like to ask you, if from your knowledge of railroading, the remedy is worse than the disease?

A. It is no better. The disease will still exist.

Q. You say that the disease will still exist?

A. It does not make the proposed location of that connection any [fol. 329] less dangerous.

Q. What have you to say with reference to yard engines and first class trains?

A. Yard engines must keep clear of first class trains.

Q. Suppose a first class train leaves Meridian, which is a terminal, runs late going to Jackson. What would the yard engine be called upon to do in case the yard board was set out here as suggested?

A. It would be called upon to keep the main line clear against that delayed passenger train.

Q. Would it interfere with him in the handling of his engine?

A. The switch engine would not be able to perform its duties until the passenger train had passed. And it would certainly be difficult to get out there and do that work.

Q. And the result would be what?

A. That would result in lost motion and lost time to the switch engine crew.

Q. Would that interference and lost motion and lost time be reflected on any other business in that yard?

A. Where we are operating three switch engines in 24 hour period in a town the size of Jackson there are a great many duties for the three shifts to perform and delays in the movement of the yard engines means delays in other business, and delays in handling the business means dissatisfaction to our passengers, and it further means the creation of a panic at the terminal if we don't have time to make up the trains. A delay in the switching reflects on the train operations always.

[fol. 330] Q. Couldn't a time schedule be prepared to obviate such a situation as that?

A. No, sir, I don't think so.

Q. Would that disarrangement as shown be reflected on one train, or would it go on down the line?

Mr. Stone: We object to the leading question.
The Court: I sustain the objection.

Q. State whether or not that disarrangement would be reflected on more than one train?

A. As stated a delay to a switch engine delays the work in the yard, it delays a number of trains, it delays the handling of the cars in the yard, and in this particular movement, on this long distance single track, it would seriously interfere with the operations of section and bridge crews and the work on bridges. A delay to a switch engine in the performance of its duties is reflected all down the line.

Q. Do any of these last objections that you have been discussing, are they applicable to a terminal such as Meridian in the same extent as they are to a transit yard?

Mr. Stone: We object to the leading question.
The Court: I sustain your objection.

Q. State whether these objections which you have discussed would or would not be equally as applicable to a terminal yard such as Meridian?

A. They would not be equally as applicable.

Recross-examination by Mr. Stone:

Q. The delay of any train disarranges the regular routine of the [fol. 331] business, does it not?

A. Mr. Stone, I will answer that question in this way. The delay of any train may not delay all other trains, because we have a dispatcher to take care of things of that kind, to direct the regular movement of trains.

Q. But you would have, for instance, a delay of passenger trains meeting other passenger trains?

A. The dispatcher by watching these two trains may be able to fix a meeting point of the trains in question without serious delay to the other train.

Q. Here is a train coming east on the A. & V. and there is a train following it from the west coming east. The head train is delayed, and if it is delayed very much it effects everything behind it?

A. That delay is on the main line?

Q. Here is a train that takes passengers, mail and express and it is delayed for a few hours, that delays the trains here that have not started out, does it not?

A. Of course, it would delay the trains.

Q. In other words, this particular train would have the regular routine balance disarranged, and you can't operate other trains on time?

A. There are switch connection- between here and Jackson which would make it possible to run the trains without delay, much delay.

Q. It would be impossible, to get back to the connection, to have a switch connection at any point without disarranging the present [fol. 332] system of your traffic?

A. Not to the extent of working this point.

Q. You spoke of your dispatcher taking care of delayed trains, you have a dispatcher at Jackson?

A. We have no office at Jackson, Vicksburg takes care of that section.

Q. The Jackson office would be notified?

A. By the dispatcher at Vicksburg, yes.

Q. You have block signals from Jackson clear out over to Pearson beyond this point, so that when a train was in there the block signal would be set so that no train would run in there?

A. We have the block signal protection.

Q. And if a switch train was in there no other train would go in there?

A. When the block signal was on no train would go in there.

Q. No train could close the switch and not go in there?

A. No switch engine would have the right to disregard it any more than the main line trains.

Q. There is testimony that these trains, these passenger trains run as high as 60 miles an hour across Curran's Crossing at a place where the track can't be seen over three car lengths from the engine. A switch engine wouldn't run that fast?

A. A switch engine can't run as fast as the regular trains.

Q. The crew on the switch engine would be able to see a man making this crossing?

A. They should.

[fol. 333] Q. Now, Mr. Stamm, isn't it a fact that these thousands of objections that you are making to this point of connection are theoretical, they may occur and they may not?

A. I think that the testimony is based on practical railroading from past experience.

Q. But from a theoretical standpoint?

A. My testimony is based on facts as I see it. Of course, to all these hypothetical question- I have given theoretical answers.

Q. If they are based on theory these delays are not according to past experience?

A. But I believe they will happen.

Q. They will or might?

A. I will say will.

By Mr. Monroe:

Q. Mr. Stone asked you about a late train going to Jackson, and you explained that a dispatcher at Vicksburg might take care of other trains without delaying them unnecessarily. If the switch engine from the Jackson yards was gone away down on a single track, like this one across Pearl River, how would the dispatcher give this crew any directions?

A. The dispatcher couldn't give them any instructions without a radio and we don't keep a radio.

Q. One other question, Mr. Stone asked you about these thousand of objections that are being made to this proposed point of junction,

and asked you if they were not objections that could be made to any other point. I will ask you from your experience as a railroad man whether this proposed point of connection has as many or more points of objections than any other point that you know of on the [fol. 334] A. & V.?

Mr. Stone: We object, as he has already gone over that.

Mr. Monroe: I didn't know whether I asked him that or not.

Q. Mr. Stamm, I would like to ask you as to the number of objections that you have given to this point of connection, the material objections, how do they compare with other points of junction to the A. & V. Railroad?

A. It is very objectionable.

Q. Which is the worse?

A. This connection here is the most dangerous and there are more points of objection to it than any point that could have been selected on the A. & V. Railroad.

(Witness excused.)

[fol. 335]

Friday, August 10, 1923—nine o'clock a. m.

D. A. COLLUM, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name, residence and occupation?

A. D. A. Collum, Brandon, Mississippi, road commissioner.

Q. Of what road district are you the commissioner?

A. District Number Two, Rankin County.

Q. Who is the Supervisor of that district?

A. Col. Sidney McLaurin.

Q. Who is Col. Sidney, is that the gentleman over there?

A. Yes, sir.

Q. When does Mr. McLaurin's term expire?

A. The last day of December of this year.

Q. Is he asking for re-election?

A. No, sir.

Q. What roads come under your supervision as road commissioner?

A. We have 185 miles of that district.

Q. Does the road immediately to the north of the Alabama & Vicksburg Railroad, what is known as Farish Bridge, and the road known as the concrete road, beginning at Pearl River, extending some two miles east come under your supervision?

A. Yes, sir.

Q. Does the branch that goes out of the concrete road, known as the Fannin road, which is in a generally northeast direction, come under your supervision?

A. Yes, sir.

[fol. 336] Q. Will you look on this map, Exhibit "F" and state if the road that I have referred to begins at the point which I am marking "1" and extends to the point I am marking "2" is the concrete road?

A. Yes, sir.

Q. And the road beginning at the point which I am marking "3" and going up to the point I am marking "4" is the Fannin road?

A. Yes, sir.

Q. How long have you been road commissioner with jurisdiction over these roads?

A. About three years and something over seven months.

Q. During your incumbency have you had occasion to observe the conduct of Pearl River?

A. Yes, sir.

Q. State what its behavior is with reference to high water or floods?

A. Well, in '21 we had the highest water since I have had that road at all, and it got over the concrete there where the little mill is.

Q. Put a point where the little mill is and mark it?

A. It is right here. (Ind.) About 30 yards, maybe 40 between the mill site and the river, the water got over the concrete road going back here in the Fannin road here.

Q. Mark that point with an "X" on the map?

A. Yes, sir. (Marks map.) And this right here is something like 40 yards maybe. We put layers of sacks of sand there when the water was up to protect the concrete bridge.

[fol. 337] Q. At 5?

A. Yes, sir. Then the water was across the bridge over here.

Q. You mean the east end of the bridge?

A. Yes, sir, something like six inches. Then there was part off the bridge here, it run in here then something like there.

Q. Put a six where you indicated there?

A. (Marks it.) The water came over again here, over this scope.

Q. From the east end of Farish bridge to point six?

A. Yes, and then the water stayed over until it got something like there.

Q. Put at the point where you said there, put a seven?

A. (Marks it with a seven.)

Q. What do you mean by saying that the water stayed over between points six and seven?

A. During the high water until it went down.

Q. What was the condition of the water on the road?

A. It was all over the road from one inch to 10 inches deep from x there up to this point where we have the seven. There is a little place right at Farish Bridge where it don't go under something like there.

Q. Put an "8" where you said something like there?

A. All right. It begins to go over again here, all the way back over the gravel road.

Q. Where does the concrete road end with reference to point "2"?

A. It ends at point "2."

Q. And where does the gravel begin?

A. Where the concrete ends.

[fol. 338] Q. Which way does the gravel extend?

A. East.

Q. Between the point marked "8" and the point marked "2" what was the condition of the water with reference to the road?

A. The water got something like 12 to 16 inches above, over the gravel road, after it came in the concrete road it came into Conway Slough.

Q. Did you have occasion during that high water to go over that section of the concrete road in a machine?

A. Yes, sir, I was there. I was there 20 days.

Q. How high was the water with reference to the axle of the machine?

A. It was above the axle.

Q. Now tell me what conditions prevailed and what your actions were with reference to your concrete bridge which is generally known as Farish Bridge approximately at a point marked with a red "B" on the map?

A. We were watching it at all times. A lot of logs drifted down against it and we had to keep them away. We believed that it was going in and we all expressed surprise that it didn't.

Q. Where was the water in 1921, the high water with reference to the Fannin road, at the point marked three and extended to four?

A. It stayed over the Fannin Road out about five miles from Jackson, all over it.

Q. All the way over it?

A. Yes, sir.

[fol. 339] Q. Have you got any idea how deep it was over the Fannin road?

A. It got up so the people couldn't come across it with horses they had to come in boats.

Q. Did you have any high water in that Pearl River bottom this year? In 1923?

A. Yes, sir.

Q. Where did the water in 1923 get with reference to that Fannin Road, beginning at point three and going to four?

A. Right there it overflowed, something like right where the point is.

Q. Put a nine where the point is?

A. All right. (Witness makes mark.)

Q. Did it run over at point "9"?

A. Down to this point.

Q. Put 10 at this point?

A. All right. It was something like 12 to 14 inches deep between these places.

Q. Between 9 and 10?

A. Yes, sir. The water went over my axle when I went in there to fix the bridge.

- Q. Mark it 11 where you went to fix the bridge?
- A. Yes, sir. I suppose it was something like there. (Makes the mark.) Then it goes down here to something like there.
- Q. Put a 12 there?
- A. (Witness makes the mark suggested.)
- Q. And there it came over again?
- A. I went in here, came over in a road truck that we have and [fol. 340] and while we were in there the water got in the car and killed the engine and we were some time trying to back it out, the water must have been $2\frac{1}{2}$ or three feet deep, at a place called Neely Creek.
- Q. That occurrence was in this year, 1923?
- A. Yes, sir, more than one time, the water was up two or three times. It might not have been so high as at the particular time that we had the car trouble, but it was up three or four times.
- Q. In this water of 1921, did you have any difficulties with any of our bridges on the concrete road at that time?
- A. Yes, sir.
- Q. Begin with Farish Bridge and tell what the situation was there at that bridge?
- A. At Farish Bridge we put sacks of sand three sacks high to keep the water back.
- Q. Did you take any precautions concerning Farish Bridge in 1921?
- A. Well, yes, sir, particularly in keeping everything off.
- Q. Why?
- A. It might go off most any minute.
- Q. You mean washed away?
- A. Yes, sir.
- Q. Did you have any trouble with any other bridges on the concrete road?
- A. Yes, sir, right here.
- Q. You indicated a point marked "Y" in red on that map, on the map "F"?
- [fol. 341] A. That was a concrete culvert, it must have been 15 to 18 inches.
- Q. What happened there?
- A. It caved in or washed out.
- Q. Just describe what happened to the bridge?
- A. We had been watching it day and night all along there, watching Farish Bridge, trying to save these places, we had a couple of negroes watching the place and I would go there and rest them some, and some people came along and found this bridge had washed off and went back and notified the negroes and they went up there and stayed the rest of the night to keep the people from coming into it. When it was practically caved out, there was a hole knee deep below the bridge there.
- Q. What did it do to the road below the bridge?
- A. It tore the bank out there below the road to the south.
- Q. Describe to the Judge what this looked like between point six and point seven during the year 1921 when the high water was along the concrete road?

A. It looked like a field of water.

Q. How deep was the water?

A. All the way from one inch to 12 or 15 inches. Of course, on the lower side it must have been a 12 or 15 inch flow, where the water jumped off the concrete road.

Q. Now, are you a native of what county?

A. Rankin County.

Q. Is this piece of road in that county?

A. Yes, sir.

[fol. 342] Q. How long have you lived in this neighborhood?

A. Four years in this Beat, Beat Two.

Q. How long have you lived in Rankin County?

A. I have been in Rankin County all of my life, or with the exception of a year or something like that.

Q. How close do you live to Pearl River?

A. I was raised in four miles of Pearl River.

Q. Have you had the behavior of Pearl River under your observation.

A. A whole lot.

Q. Have your observations been in the neighborhood of this road?

A. Yes, sir.

Q. Does your observations with respect to Pearl River lead you to expect anything in regard to floods?

A. We can expect floods most any time. We can't tell when it is going to overflow. We look for them any year. Of course, this year we have had more than usual. We have had a half a dozen this year.

Q. What elevation of flood do you expect as compared with the concrete?

A. It is liable to go over the concrete road any time so far as that is concerned. This year it has been in a few inches of the top several times, a half dozen times.

Q. Have you observed the effect on the current of the overflow waters of Pearl River of the construction of the concrete embankment and the gravel road embankment in that valley?

A. Yes, sir. I have been there when it was the highest since 1921.

[fol. 343] Q. Tell me what effect the construction of that gravel road and the construction of the concrete road has been with regard to the waters in the neighborhood of Farish Bridge and out in the valley to the east?

A. Of course, this road causes the water to crowd down like between two dams and it gives it greater strength. Of course, this is down stream.

Q. Has it had that effect?

A. Yes, sir.

Q. Mr. Collum, look on this map, beginning at "J" and trace this black line which indicates the proposed fill of the Jackson & Eastern which I am running my pencil through?

A. Yes, sir.

Q. That is to the southeast of the concrete road and of the Fannin road?

A. Yes, sir.

Q. From your experience and observations of conditions there can you tell the Court what will be the result of building that embankment along that line?

Mr. Stone: I don't think the witness has qualified as an expert on drainage and we object to the question.

The Court: I think he knows the conditions there and can answer the question.

Mr. Stone: We except to the ruling of the Court.

A. I think that this dump forces the water up stronger and higher towards the Farish Bridge.

Q. By this dump you mean the dump of the Jackson & Eastern?
[l. 344] A. The dump of the Jackson & Eastern.

Q. By Farish Bridge, that is approximately at the red "B" on the map?

A. Yes, sir.

Q. And you say where the river runs against Farish Bridge it would give it a higher and stronger current?

A. The more water that is forced into the channel the stronger it will make the current against the bridge.

Q. Are you speaking of the highway bridge or the railroad bridge?

A. I was speaking of the highway bridge.

Q. Now, suppose the highway bridge where you had to work to build it in times of high water, what will be the effect of a stronger current on that bridge?

A. Why it will blow the bridge in and if that should happen it would be similar to tearing the trestle away, like a case we had in Bolivar—

Mr. Stone: We object to what happened in Bolivar.

The Court: I sustain the objections.

Q. When you say trestle you refer to the Farish Bridge trestle between the A. & V.?

A. Yes, sir.

Q. And a stronger current will blow the bridge out?

A. And it will tear up anything it hits.

Q. Normally, without any embankment there, that Jackson & Eastern or any other embankment where does the overflow water of the Pearl River go?

[l. 345] A. Out in the Pearl River valley, all over the swamp.

Q. How far in the valley does the water extend?

A. In this direction?

Q. Yes?

A. Away out on the Brandon road.

Q. How far out or down the A. & V.?

A. Nearly to Pearson. There is something like four months in a year that we don't work at all, the water won't permit it.

Q. And the waters of Pearl River comes out four miles on the A. & V.?

A. Yes, sir, something like that.

Q. From the point of effect of your concrete road and the gravel

road, what would be the effect of the construction of that Jackson & Eastern dump to the south of it?

A. In high water you mean?

Q. Yes?

A. I think it is going to force the water down against the highway bridge and of course that means it is going to break and when it breaks the Farish Bridge—

Q. Why do you say it is going to break over?

A. When the whole force of water comes there against the bridge of course the bridge will go in, and the railroad bridge on the east end there at Farish Bridge is only four to six feet from the concrete bridge, you know.

Q. You say that the end of the highway concrete bridge or Farish Bridge on the east and the railroad trestle are how far apart?

[fol. 346] A. From four to six feet or something like that.

Q. When your water gets under your concrete bridge at that point what happens? In that four to six feet?

A. It don't get quite here on the east under Farish Bridge, there is a dump out there at the end of the trestle.

Q. Whereabouts is that dump with reference to the Railroad Farish Bridge?

A. On the east end.

Q. On what side of the embankment?

A. South side of the embankment.

Q. Mr. Collum, I want you to tell me how far up the Fannin road the high water extends in time of flood, how far from the point of junction?

A. The fork of the road must be a mile and a half from Jackson.

Q. To the point where it overflows?

A. Yes, sir, something like that.

Q. How far from the point of junction up the Fannin road does the flood extend?

A. To the five mile board.

Q. From Jackson?

A. Yes, sir.

Q. And the distance from the point of junction to the five mile board would be five less $1\frac{1}{2}$?

A. $3\frac{1}{2}$.

Q. Were there any other bridges in that neighborhood that caused any difficulties?

A. Yes, sir, this bridge right here washed out.

[fol. 347] Q. That would be "Y," approximately?

A. Yes, sir, right here then.

Q. And the next little bridge?

A. That was here.

Q. Put number 13 on the next unlucky bridge?

A. (Marks 13.) This cave out was below there and washed out there from 8 to 10 feet.

Q. How deep?

A. From 8 to 10 feet below the bridge where it jumped off on the south side.

Q. What happened to the bridge?

A. It is still standing.

Q. Then we come down to the point where we will put 14?

A. Yes, sir.

Q. What happened?

A. It washed a little. It must have been an eight foot bridge.

Q. What kind of bridge?

A. Concrete bridge.

Q. And then we get on down to there where we will put a 15?

A. Yes, sir. This bridge caved out on each side of the walls, it caved out four feet under the side of the bridge.

Q. On which side?

A. On the west side mostly, some on the east side.

Q. What kind of a bridge was that?

A. Concrete.

Q. Mr. Collum, you have been making all these figures with a lead pencil, marked on Exhibit "F," haven't you?

[fol. 348] A. Yes, sir.

Q. When Pearl River reaches its flood stage the water comes out of the banks this way (Ind.). Is that all the water that goes down that way?

A. No, sir there is other water from ravines that it mixes with.

Q. Describe the general nature of the drift?

A. We can see the general direction of the water from the drifts.

Q. Is there anything but water?

A. Yes, sir, there are logs and everything else that goes down. One log came against Farish Bridge here that we never did get away until the water went down some. We had to keep the drift that hit against the bridge off, but it was impossible to get this log away, it got across the construction base someway in there.

Q. What was the size of the logs and drift that got up against the bridge?

A. This particular log must have been 14 or 16 inches through and it was 40 feet long.

Q. And it was pressing against the bridge?

A. It and everything else. I kept two hands busy pushing and keeping the stuff down so it would go through.

Q. Explain to the Court the effect of that pressure against your bridge?

A. This brush and stuff, and of course the water gets on it and the swift slashing of the water over the sides and above it come with an awful strength.

[fol. 349] Q. Does the brush ever have a tendency to obstruct the channel under the bridge?

A. Yes, sir.

Q. What effect does that have on the height of the water?

A. It makes the water go a little higher.

Q. What effect does it have on the safety of the bridge?

A. A strong current such as that is liable to take it away.

Q. You say that this log came down the stream, at what rate was it moving would you say?

A. At the rate of from 30 to 40 miles an hour.

Q. During that flood how long did you stay on duty at the Farish Bridge, that was in 1921?

A. Something like a week.

Q. For what portion of the 24 hours?

A. Some of us stayed there day and night.

Q. Mr. Collum, I would like to ask you from your experience up in that River, with its current, the effect that the building of an embankment along the general lines of the Fannin and concrete roads, in your opinion, would be in case that Jackson & Eastern dump was built there on the line indicated on the map "F" and in case you had four feet more water than you had in 1921? What the effect would be on the A. & V. embankment between point "J" on the map "F" and the Pearl River Bridge?

A. The effect would be to tear this away.

Q. You pointed to the Farish Bridge?

A. Yes, sir. The east end of the Farish Bridge, the end of the trestle and the embankment, because if it goes around this concrete [fol. 350] bridge it is going against the railroad bridge.

Q. I believe you said in '21 the water came over here 12 inches deep between points six and seven?

A. Yes, sir.

Q. Suppose the Jackson & Eastern embankment was built on the line indicated to the southeast of the concrete road there, what would be the effect of the current?

A. It would force the water up this way. Of course, this here embankment if it was put here, of course, that would throw the water back up the Fannin road and put the highway under water along up here.

Mr. Stone: We move to exclude the statement with reference to the Fannin road.

The Court: Objections overruled.

Mr. Stone: We except to the ruling of the Court.

Q. This current would be set up coming down between the Jackson & Eastern and the concrete road to point "J"?

A. Yes, sir. The water would be forced to come stronger.

Q. What would be the effect of the current coming down into this narrow channel between the concrete road and the embankment of the A. & V.?

A. It would force it out in the 4 to 6 feet between the east end of the Farish Bridge and the railroad trestle.

Q. And what would happen to the dump under Farish Bridge?

A. It would tear it all out.

Q. Mr. Collum, you have got a good many openings in the concrete road, haven't you, between Farish Bridge and point "2"?

[fol. 351] A. We have 5.

Q. But notwithstanding the openings, what is the effect of the current on your concrete road?

A. When the water is up you mean?

Q. Basing your statement on what you have said before?

A. The current is mighty strong against all of it.

Q. Against your road?

A. Yes, sir.

Q. Then which way does it go?

A. It goes south.

Q. Which way in regard to Farish Bridge?

A. It turns back after it goes over the concrete bridge, still headed down into this point here (Ind.).

Cross-examination by Mr. Stone, for the defendant:

Q. Mr. Collum, you are a road commissioner under the Board of Supervisors of Rankin County?

A. I am.

Q. Mr. McLaurin, who is an attorney in this case, is the president of the board?

A. Yes, sir.

Q. When the county undertook to construct this concrete highway and this gravel highway the A. & V. protested against the construction?

A. I don't know, I was not with Beat Two at the time.

Q. You were a citizen of the county then?

A. Yes, sir.

Q. Don't you know that proceedings were filed in court in order [fol. 352] to stop the building of this highway?

A. I am not able to say, I don't know, I didn't live in Beat Two at that time.

Q. You knew nothing about any proceedings against the building of this concrete roadway by the A. & V.?

A. No, sir, at that time I was employed in Beat Three in the road business.

Q. That adjoins Beat Two?

A. Yes, sir.

Q. You never heard of it?

A. No, sir, I never talked about it.

Q. Mr. Collum, you spoke of a bridge, a concrete bridge right near the River on your highway, that if it broke through it was liable to give trouble to the A. & V. How wide is the opening under the bridge?

A. I have never measured it. You mean the concrete bridge?

Q. Yes?

A. I have never measured it, but it is about 80 to 100 feet, maybe a little more.

Q. How much smaller is that than the corresponding bridge of the A. & V. trestle?

A. I don't know sir.

Q. Isn't the trestle of the A. & V. longer than this bridge?

A. Yes, sir, some longer.

Q. Isn't it a great deal longer?

A. I don't know how much.

Q. How much, is it twice as long?

[fol. 353] A. I couldn't say that.

Q. Would you say that it is less than twice as long?

A. I would say that.

Q. Now, Mr. Collum, you have certain openings under your road for the passage of water?

A. Yes, sir.

Q. If you had more openings, of course, the water could go through more easily and prevent damage to the road?

A. The more openings we have the better the water goes through.

Q. The way it is, with the openings that you have the water dams up on the river side of your good road anywhere from a foot to a foot and half higher than it is on the other side?

A. Yes, sir, than it is on the south where it runs over the concrete road.

Q. You have more water on the river side than you have on the other side?

A. Yes, sr.

Q. Against the road bed?

A. Yes, sir.

Q. If you had more openings, sufficient openings, for this water to pass on through that would prevent the damming up of the overflow?

A. If we didn't have the road bed it wouldn't go so high.

Q. But if you had enough openings the water would be as high on one side as it is on the other side, wouldn't it?

A. I suppose so, I never tried it.

Q. You have stated that the building of the Jackson & Eastern [fol. 354] dump is going to do what?

A. To impound the water against the bridge.

Q. The Farish Bridge?

A. Yes, sir.

Q. Of course, the water impounded is going to depend on the number of openings through the embankment?

A. Of course, you can take anything of any kind that you are going to put out there, any dump 150 yards long would have a tendency to force the water that way.

Q. Do you know how many openings are to be in this Jackson & Eastern road bed?

A. No, sir, I don't know.

Q. You are not an engineer?

A. No, sir.

Q. You don't supervise your road then with the skill of an engineer, a civil engineer?

A. Nothing more than I know pretty well what it takes to take care of water, you know. I have been in the road business off and on for 16 years.

Q. But you are not a civil engineer?

A. No, sir.

Q. You testified that the water on the river side of your road was from a foot to a foot and a half higher than it is on the other side?

A. Yes, sir.

Q. The other side of the road is next to the Jackson & Eastern?

A. Part of the way, it crosses up here.

[fol. 355] Q. It don't cross the Fannin Road?

A. No, sir.

Q. There is a public highway along through this whole territory of the Jackson & Eastern?

A. Yes, sir.

Q. Now then, if there are openings left in that dump sufficient to carry the water away then the dangers you have been mentioning will be done away with, won't they?

A. You mean from the Fannin road and the concrete road?

Q. I mean both the Fannin road and the concrete road?

A. No, sir, I don't think they would all be done away with.

Q. If the water is carried off?

A. Yes, sir, if the water is carried off, but I don't think they can carry that water away. Going north on the Fannin road after you leave the concrete road, the water goes this way naturally.

Q. I understand that the building of the dump is going to throw the water down that way, it will go that way whether there is any railroad built there or not?

A. Yes, sir.

Q. It will go down there whether there is any road there or not?

A. Yes, sir.

Q. If there are openings enough left in the road to permit the water that wants to go through to pass through the openings it is not going to effect the railroad?

A. The new railroad?

Q. The A. & V. Railroad?

A. I don't know sir.

[fol. 356] Q. Don't you know that if there are openings there to let the water go through, don't you know that it will not effect the A. & V. at all?

A. If there was plenty, of course, it would take care of the water.

Q. You are no engineer and are not in shape to figure how many openings are necessary?

A. But it will take a heap of them if it is done right.

Q. But that is an engineer's job?

A. Yes, sir.

Q. And you are no engineer?

A. No, sir.

Q. And you don't know how many have been provided for?

A. Not in the Jackson & Eastern Railroad.

Q. This trouble that you have been testifying about that you had in there with the road, that was not caused by the Jackson & Eastern?

A. No, it was not there at the time.

Q. That trouble was here when you built this good road?

A. I think it made this water go up before that, but I don't know, I didn't build that road.

Q. The more culverts you have the less dangers is the water?

A. Of course.

Q. Has the Railroad Company since you have been in charge there requested that you put in more openings to reduce any dangers?

A. No, sir.

Q. They have made no requests about it at all?

[fol. 357] A. No, sir.

Q. You are in charge of it there?

A. Yes, sir.

Q. The attorney for the A. & V. Railroad is president of the board of supervisors?

A. Yes, sir.

Q. And he was president of the board when this road was constructed?

A. No, sir.

Q. Since he has been president of the board and attorney for the railroad has there been any movement made to increase the openings in the highway for the protection of the A. & V.?

A. I don't know how long he has been attorney for the railroad, but since I have been there for about three years and something like seven months, if there has been any talk about it I don't know it. We suggested a time or two that if the concrete bridge blowed in it might be dangerous.

Q. That was done for the protection of your own road?

A. Yes, sir.

Q. And not for the protection of the A. & V.?

A. No, sir.

Q. What is the number of feet of culverts and bridges in the concrete road from the River up to the point where the Fannin road turns out?

A. I don't know how long the Farish Bridge is, but we will say it is 100 feet, it is something like that and liable to be more.

Q. That is your best judgment?

[fol. 358] A. Something like that, and there is a new concrete bridge that was rebuilt when it blowed up, and it is 28 or 30 feet, and there is another before you get to the Fannin Road of 10 or 12 feet. It is right in here. (Ind.)

Q. There are then, three, the Farish bridge and two others?

A. Until we get to the Fannin Road.

Q. What is the distance of that?

A. I suppose about three quarters.

Q. Of a mile?

A. From the end of the river bridge to the Fannin road.

Q. This Farish bridge is that the river bridge?

A. No, sir.

Q. How close is it to the river bridge?

A. It must be 600 yards from the Farish bridge.

Q. And the total amount of space for the passage of water is about 100 feet?

A. The Farish bridge makes up a 100 feet or more and then the next one is 28 or 30 feet, the new concrete bridge that was built and 10 or 12 feet in still another one.

Q. I understood you to say that it was 80 feet in the Farish bridge?

A. Something like 80 or 100 feet. It is a pretty good opening there.

Q. You are willing to swear now that it is over 100 feet?

A. I would bet it is over 80.

Q. I am not asking you to bet.

A. Well, this is election times and I can hardly keep from saying [fol. 359] it now and then.

Q. Mr. Collum, did I understand from your testimony that if the river comes up any higher so that it will run over your Farish bridge that it will cut it away, wash it out?

A. That is my judgment about it, that it will tear it out between the east end of Farish bridge and the A. & V. There is only about four or six feet in there and it is going to be mighty swift.

Q. That will be true whether the Jackson & Eastern is built or not if the river gets high enough?

A. Yes, sir.

Q. But it has been pretty high and that never has occurred?

A. It never has washed out. Not since I have been there myself.

Q. You spoke of a bridge washing out?

A. At the bend of the river.

Q. On the concrete road?

A. Yes, sir.

Q. That was right at the bend of the river, wasn't it?

A. It was right in here. (Ind.)

Q. Tell me, the bend is closer there to the little bridge than it is here? (Ind.)

Mr. Monroe: Closer to what bridge?

Q. The river shows that it runs closer here than it does here?

A. It is in the bend of the river, yes, sir.

Q. Isn't it closer?

A. In the biggest part of the bend.

Q. Before you commenced doing road work, what was your business, Mr. Collum?

A. I worked prisoners for five years.

Q. What road?

A. On the County Farm.

Q. I asked you what you did before you went in the road business?

A. Yes, sir.

Q. What did you do?

A. I worked prisoners for five years, county prisoners on the county farm, and before that I farmed practically all my life, did a little public work.

Q. And you have been doing good road work how long?

A. Off and on for 15 years.

Q. You mean you have been building good roads?
A. Yes, sir.

Redirect examination by Mr. Monroe, for the complainant:

Q. How much higher did you say the base of the rail of the A. & V. is than the top of the concrete road?

A. Something like six feet. I am six feet high myself, and it seems to be higher than my head.

Q. When you are standing where?

A. On the concrete road.

Q. Is any of that Jackson & Eastern proposed dump built there now?

A. Yes, sir.

Q. How much of it is built now?

A. I don't know sir.

Q. Approximately?

[fol. 361] A. There must be 500 yards of it, something like that.

Q. After it crosses the concrete road going from Farish bridge, back on the north side, up Fannin road, how much is built up in there?

A. I have never seen that.

Q. Between the concrete road and the A. & V. you would say how much is built?

A. It is between 500 and 600 yards long.

Q. In that 500 yards are there any openings?

A. There next to the A. & V. it looked as there might be an opening and one down next to the concrete road.

Q. What percentage of it is open as compared with the solid dump, I am speaking of the section between the concrete road and the A. & V.?

A. I have never measured it, but I guess it is something——

Mr. Stone: We object to his guessing.

A. My best judgment is that it is 200 feet all the way through.

Q. Let me see if I understand you?

Mr. Stone: We object, he has already said that he never measured it.

The Court: Let him give his best judgment.

Mr. Stone: We except to the ruling of the Court.

Q. I would like for you to tell the Court where the openings are in that dump?

A. There is one right here. (Ind.)

Q. Right here don't mean anything. You put your section here of the concrete road and the Jackson & Eastern line on the map "F." [fol. 362] A. It must be 30 or 35 yards, it is not finished, and I don't know what it will be.

Q. Where is their next gap?

A. Back here.

Q. By here you refer to a point right opposite the A. & V. trestle?

A. Yes, sir.

Q. Will you put number 17 where you say the lower opening is?

A. I will. (Witness marks map.)

Q. Between the road intersection which you marked "8" up there and the point "17," is that the embankment?

A. Yes, sir. Mr. Tanner, he has a barn in there. You can see the dump, part of the dump from the concrete road, and if there is any more openings it must be where I can't see them.

Q. How long has there been a road where that concrete road is now, a public road?

A. When I could first remember the road was put there.

Q. There has been a road in the same locality?

A. As far back as I can remember.

Q. How far back can you remember?

A. For a good long time.

Q. How old are you?

A. 42.

Q. And later on this highway was built where the old road was?

A. Yes, sir.

Q. What about the highway bridge, the Farish Bridge?

A. I suppose that was re-built at one time, but I don't know how [fol. 363] long that has been back.

Q. As far back as you can remember has there been a bridge there?

A. Yes, sir.

Recross-examination by Mr. Stone, for the defendant:

Q. Mr. Collum, you have been talking about dangers, these are dangers that may occur and may not?

A. Yes, sir.

Q. All of them?

A. They are liable to occur, in fact.

Q. When this water overflows, when you had high water this year, I believe you said it run over your road?

A. The Fannin road.

Q. The concrete road?

A. No, sir, it didn't go over the concrete road this year.

Q. How much higher was it on the river side than on the other side?

A. A right smart higher.

Q. Now, Mr. Collum, you know right where this crossing is, Curran's Crossing?

A. Yes, sir, I do.

Q. Isn't there a movement on foot by the supervisors to change Curran's Crossing to a point exactly where we are going to make this intersection, or fixing to make it?

A. I have heard talk to that effect.

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Mr. Monroe: We object to any talk, and move to strike out any statement about any talk.

The Court: I sustain the motion.

[fol. 364] Q. Do you know whether or not the Board of Supervisors of Rankin County, with Mr. McLaurin, President of the Board of Supervisors of Rankin County, are fixing to undertake to change Curran's Crossing to this point of intersection, or close thereto?

A. I don't know.

Q. Has Mr. McLaurin, the president of the board, told you anything about that, or discussed it with you?

A. No, sir.

Q. Have the Board of Supervisors discussed the question of this change?

A. Not before me.

Q. Not before you?

A. No, sir. They have never said a word to me about it.

Q. You haven't heard a word about it?

A. I might have heard some talk, but it was from others.

Q. Wasn't it public talk?

Mr. Monroe: I object to the talk and move to exclude it.

Mr. Stone: I want to show that there is a rumor that it is to be changed.

The Court: Let Mr. Collum state what he heard from the Board of Supervisors about it.

A. It has been discussed among other people that they wanted it changed and things like that.

Q. Wasn't there a piece about it in the paper?

Mr. Monroe: We object to what was in the paper.

The Court: I sustain the objections.

(Witness excused.)

[fol. 365] M. M. ROBERTSON, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name, residence and occupation, Mr. Robertson?

A. M. M. Robertson, residence Houston, president of the Houston Times.

Q. How long have you been so occupied?

A. About two or three months.

Q. Have you ever had any connection with the A. & V. Railroad?

A. Yes, sir, a good many years ago I was claim agent.

Q. Between what periods were you employed by that company and in what way?

A. I first went with the railroad in 1894 as stenographer and clerk, and later on I was made claim agent, in 1896, and I continued in that capacity until 1899 when I went away for a few

months, and came back to the road in February, 1900. In May 1910 I went to New Mexico on a business venture of my own, and returned to the road again in 1915.

Q. And remained for what period?

A. Up to 1917.

Q. Since 1917 have you been employed by the road at all?

A. No, sir, I have not.

Q. You said that you had been claim agent, freight claim agent?

A. Personal injury and damage claims.

Q. During the time that you were thus employed by the A. & V. Railroad did you have occasion to pass over the road in the vicinity of Curran's Crossing just east of Jackson?

[fol. 366] A. Yes, sir, a great many times.

Q. Had you any occasion to notice the behavior of Pearl River at any time during that period?

A. Yes, sir.

Q. Was there any flood on that river during the time you were in the claim department?

A. They were frequent at this place.

Q. Did you make any observations of the result of that flood and take any photographs of it?

A. Yes, sir, a number of times I took photographs over there.

Q. During what year was any particular flood that you remember?

A. The most serious flood was in 1902, I believe.

Q. Approximately?

A. Yes, sir.

Q. Tell the Court what the effect of the flood was on the A. & V. Railroad track?

A. It turned the track over, washed out the road in Pearl River bottom to such an extent that it had to be re-built.

Q. Mr. Ford has handed me some photographs which I hand to you which I have marked G-1, G-2, G-3, G-4, G-5, G-6, and G-8. I will ask you to examine these photographs and state whether or not they correctly represent the flood conditions in the flood approximately in 1902 in the neighborhood of Farish Bridge, so called, or the bridge at the milepost number 94 on the A. & V. Railroad, at that time?

A. These represent the conditions that existed there during that overflow, yes, sir.

[fol. 367] Mr. Monroe: In connection with the testimony of this witness we offer in evidence and ask to have identified the photographs mentioned above.

The seven photographs were handed to the stenographer and were then and there identified as Exhibit- G-1, G-2, G-3, G-4, G-5, G-6, and G-8.

[fol. 368] Q. Mr. Robertson, look at this Exhibit G-8 to your testimony being a picture of the railroad ties and a gentleman in a skiff, who is the man in the skiff?

A. That is myself.

Q. In what flood was that done.

A. That was done in the 1902 flood.

Q. What did it do to the railroad tires?

A. That is a picture of the railroad tires where it picked them up and turned them over bottom side up.

Q. What railroad is that?

A. The Alabama & Vicksburg Railroad.

Q. At approximately what point is that?

A. Mile post 93, telegraph post 6.

Q. Will you look on the map "F" and tell us approximately how far from Farish Bridge that is?

A. That is about or in the neighborhood of three-fourths of a mile east of there.

Q. Of Farish Bridge?

A. Yes, sir, the 94 mile post is right at Farish Bridge.

Q. Does that photograph correctly represent the conditions existing at that point?

A. Yes, sir.

Q. Take photograph G-6 and tell us where that is?

A. That is mile post 93, telegraph post 25. That is Curran's Crossing.

Q. Does the mark on the telegraph post appear on the photograph? [fol. 369] A. Yes, sir, the number of the telegraph pole is in the photograph.

Q. Does that photograph correctly represent the condition at that point at that time?

A. Yes, sir.

Q. Take photograph marked G-5 and tell me, if you can, approximately where that is?

A. This is west of Curran's Crossing.

Q. Does that correctly represent the conditions existing at that point at that time?

A. Yes, sir. That is right about where the track was washed off and turned over, notice the ends of the tires, and further here in the picture it is turned over completely.

Q. Did you say how far west of Curran's Crossing this is?

A. I didn't give the exact location from the photograph. I don't believe it has a mark from which I can get the location.

Q. Examine this photograph, G-2, and tell me from the photograph, the telegraph pole, where it is on the A. & V. track?

A. That is located at mile post 94, telegraph pole 5 west.

Q. Does that correctly represent the conditions prevailing there at that time?

A. Yes, sir.

Q. Examine this photograph, G-1, and tell me from the telegraph pole in the photograph where it is?

A. That is about the same point after the water had gone down and the road was being re-built.

[fol. 370] Q. Have you examined Exhibit G-2?

A. Yes, sir, that was the last one before this one, the numbers on it being 94 and 5. About the same location as number One testified to a minute ago.

Q. Examine photograph G-4 and tell me what it is?

A. That is another picture representing the situation at the same time. That picture is looking back this way, and this picture is looking west.

Q. Where is that?

A. I believe that is 93-15. That would be half way between mile post 93 and mile post 94.

Q. Tell me whether or not that correctly represent- the conditions that prevailed there at the time?

A. Yes, sir, these are the conditions that prevail there at the time. The track was torn up and further back it was completely torn away. I got a skiff and went to this point and got this photograph.

Q. In each instance these are photographs of the right of way of the A. & V.?

A. Yes, sir.

Q. What was the relation to the crest of the flood, the conditions shown here?

A. That was after the crest of the flood. The water had gone down quite a little when these photographs were taken.

Q. Did your duties as claim agent attending to personal injury claims during the period mentioned give you any familiarity with accidents and places at which accidents were apt to happen?

fol. 371] A. Yes, sir.

Q. Did you have Curran's Crossing called to your attention at all?

A. We had a number of accidents on Curran's Crossing. We always considered it a dangerous place.

Q. Did your duties as claim agent compel you to give any study to the cause of accidents?

A. Yes, sir, I would look into the cause and see to what it was contributed.

Q. To what did you contribute the danger at Curran's Crossing?

A. The approach to this crossing from the east is on a curve which obstruct- the vision of the engineer, and from the west there are buildings on the north side. Any crossing on a curve is not as safe as one on a straight line.

Q. What is the condition on the south side of the track on the east side of the crossing?

A. There is a good deal of timber to obstruct the view of the engineer.

Q. Does it obstruct the view?

A. Partly.

Q. Is the approach partly obstructed there?

A. Yes, sir.

Q. Do you know the conditions of the elevation of the track at Curran's Crossing as compared with the adjacent land?

A. I don't know what it is exactly, but it is considerably higher, upon a fill. It know it has been raised there a good deal since 1902.

Q. Does that contribute any to the danger there, the fact that the fol. 372] crossing is on a fill?

A. Yes, sir.

Q. Have you had occasion to observe the waters of Pearl River since 1902?

A. Yes, sir, a number of times. Practically every year I was on the road.

Q. State what your observation is as to flood conditions?

A. Practically every year we have flood conditions to a greater or less degree. The water get- up sometimes even with the county road north of the railroad there. I don't believe it has overflowed the tracks since it has been raised to its present height, but it has gone over the county road, the concrete road.

Q. How far east in the direction of Pearson have you seen the overflow waters?

A. About to mile post 92, I believe that is the point where the waters reached in 1902.

Q. How far from the Pearl River Bridge is mile post 92 up the A. & V.?

A. Mile post 94 is at Farish Bridge and Pearl River is a mile west of Farish Bridge. This is close to three miles.

Q. Have you observed that flood water since the concrete road was laid to the north?

A. Yes, sir.

Q. What conditions did you observe as to the height of the water on the concrete road?

A. I have seen the water go over the concrete road.

Q. In your capacity of claim agent have you had occasion to consider the efficacy of a de-rail as a protection in railroad operations? [fol. 373] A. They sometimes protect, but I never considered them a perfect protection.

Q. I want to ask you about these trees you spoke of inside the curve as you approach Curran's Crossing. Has any effort been made by the A. & V. to get rid of that obstruction?

A. Yes, sir, we undertook to get possession of the property and clear that up inside of the curve, but we were never able to get it. It was the part of an estate, I think. Anyway we couldn't get it.

Q. These trees are not right up against the track as you go around the curve?

A. They are off the right of way, but are in dangerous proximity.

Cross-examination by Mr. Neville for the defendant:

Q. These derails are effective in protecting the main track?

A. In the matter of derails is one case in which employees are negligent. They are ineffective when they are left open.

Q. That is like anything else that depends on the human agency?

A. Every possible means is taken to make railroading safe, it has been studied in the railroad circles.

Q. But anything that depends on the human agency is short of perfect?

A. They study to make it as good as possible depending on the human element.

Q. Now, what is the difference in the embankment of the A. & V. at Curran's Crossing as it is now and as it was in 1902?

[fol. 374] A. I can't give you that exactly, because I am not

familiar with the exact difference, but there is quite a difference, it was put up to an elevation above high water is my understanding.

Q. Have they had any overflow since that time on the right of way embankment of the A. & V.?

A. I think not, unless it was over the bridge ends. I don't think the water has ever gone over the present embankment.

Q. Do you know the relative length of the trestle and the bridge on the concrete highway nearly opposite?

A. I don't know that.

Q. The A. & V. bridge is much longer than the bridge on the concrete road, isn't it?

A. I think it is, but I couldn't say for certain.

Q. When was the concrete road elevated?

A. I don't recall the date of that, when it was elevated.

Q. About how long ago?

A. It has been several years ago, but I couldn't even make an estimate.

Q. Less than 10 years?

A. Yes, sir, less than 10 years.

Q. How much was that concrete road east of Farish Bridge elevated?

A. I couldn't give you that, I don't know how much it was elevated.

Q. Considerable, wasn't it?

A. I think it was built up considerably, that is my recollection.

[fol. 375] Q. Do you know anything about the openings in the concrete road there at Farish Bridge, east of Farish Bridge?

A. No, sir, I do not.

Q. There are some openings in there?

A. I don't know where they are or how big they are.

Q. You have been over the road a good many times?

A. But I don't know about the openings.

Q. Before this elevation of the concrete road and since the elevation of the concrete road there has been no damage to the right of way of the A. & V. Railroad track since the track was built up?

Mr. Monroe: We object to any testimony about things that happened when he was not there.

Q. Within your knowledge?

A. I don't recall any damage to the A. & V. since that time.

Q. As a matter of fact the A. & V. is elevated up to a point above high water?

A. Yes, sir.

Q. What kind of a road is it, the material that it is built of?

A. Dirt, and the embankment has some slag and ballast.

Q. Isn't it a fact that in the number of injuries that took place there at Curran's Crossing, the cause of the injuries was the unusual high speed of the trains around that curve?

A. No, sir, I don't know about that.

Q. That was the charge against the railroad?

A. That was the usual allegation, that and many other things as a basis of neglect.

Q. Wasn't that the allegation in every case?

[fol. 376] A. I don't recall, but that may be true.

Q. Tell me some of the cases in which suit was brought for injuries occurring at Curran's Crossing?

A. I don't recall a case in which a suit was brought for injuries sustained at Curran's Crossing. I believe they started to bring a suit in the Sessums case which was an automobile accident in which two or three people were killed.

Q. Sessums?

A. I think that was the name.

Q. That occurred after the road was raised to its present height?

A. I think so.

Q. When did that occur?

A. I don't recall, I haven't looked up the date, but it was after that track was raised to this present height.

Q. You say that was an accident at the crossing?

A. Yes, sir. The automobile was undertaking to get across the crossing and it came up on the crossing and while it was still up there——

Mr. Monroe: We object.

Q. What train was it that struck it?

A. I believe it was a west bound passenger train.

Q. A west bound passenger train?

A. Yes, sir.

Q. Do you know what time it was, day or night?

A. It was in the day time.

Q. Was any suit brought?

A. I don't think suit was brought. These matters were settled [fol. 377] out of court.

Q. You had accidents there before the track was raised?

A. Before and after the track was raised.

Q. Can you give the total number of suits that were brought?

A. I don't think they brought any suits. The road settled most everything whether they were liable or not.

Q. Isn't it a fact that the engineers on your road run their trains at the rate of 50 to 60 miles an hour around that curve?

A. I think they go along at the usual speed that they make on the road.

Q. An engineer and a conductor testified here——

Mr. Monroe: We object to any statement made with reference to any testimony of other witnesses.

Q. Isn't the speed of from 50 to 60 miles an hour too great to go around that curve?

Mr. Monroe: We object, he has not qualified to give any such testimony.

The Court: I overrule your objections.

Mr. Monroe: We except to the ruling of the Court.

A. The curve should not prevent the engineer running around that curve at the rate of from 50 to 60 miles an hour.

Q. The danger is in the crossing?

A. It is a dangerous crossing, the speed is not the cause of the trouble.

Q. You don't think that the rate of speed would have anything to do with the accidents?

Mr. Monroe: We object, if the Court please.

The Court: I overrule your objections.

[fol. 378] Mr. Monroe: We except to the ruling of the Court.

A. I don't consider the rate of speed at a crossing whether it is on a curve or on a straight line is the cause of accidents at crossing, the cause is that people come up on the crossing directly in front of trains, if in approaching the crossing people would use diligence there would be no accidents.

Q. You mean that if people didn't cross railroad crossing there would be no accidents?

A. No, in approaching a crossing a man can stand there a little stop on the crossing directly in front of a train and let it hit him.

Q. Isn't it considered necessary to slow down when approaching a crossing on a curve on account of the possibility of meeting someone on the crossing?

A. The engineer should look ahead and see if it is clear, and if it is, it is presumed to be clear until after he gets over it.

Q. Your contention is then that the speed of a train has nothing to do with the accidents?

A. That depends on what you couple that with.

Q. Well, say a curve, where there is a crossing on a curve?

A. A road which has curves at various points, these curves are designed to carry traffic at the regular rate of speed, and I don't consider that the speed of a train has anything to do with the cause of accidents.

Q. You spoke of the accidents at Curran's crossing? You don't think the speed of the trains had anything to do with those accidents?

A. No, Sir.

[fol. 379] Q. What is the minimum rate of speed on straight track on the A. & V. Railroad?

A. They run around 60 miles an hour.

Q. They never go over 60 miles?

A. I have seen them go over 60 miles on straight track.

Q. But that is unusual?

A. Not necessarily unusual, it depends on the condition of the road and the traffic.

Q. I understand you to say that there is nothing at Curran's Crossing, in view of the fact that it is on a curve and on a fill, to make it hazardous for trains to run along there at the rate of between 50 and 60 miles an hour, around that curve?

A. No more than any other crossing except this obstruction to the view. The physical situation would have to be taken into considera-

tion. Where the view of the engineer is obstructed in the approach of a crossing it is more dangerous.

Q. You are not confining your answer to this particular point but making it general. Do you mean to say that there is nothing in the situation at this crossing to make it dangerous for the engineer to run his train along there at the rate of from 50 to 60 miles an hour?

A. I don't know that it is more dangerous at that particular curve than at some other curve, if there is nothing to cause a derailment.

Q. Are you speaking with reference to the engine of the train being derailed?

A. I am speaking with reference to the dangers there at the crossing.

[fol. 380] A. Naturally if a man don't look out in approaching a crossing on a curve it is going to be more dangerous than if it was a straight line.

Q. Your contention, then, is that there will be as many people injured at crossing if the train is running at the rate of 10 miles an hour as there is if the train is running at the rate of 60 miles an hour?

A. No, a train running at 10 miles an hour could naturally stop quicker.

Q. But I thought you said the speed of the train had nothing to do with it?

A. No, sir, I was talking about the Sessums case.

By Mr. Monroe:

Q. Mr. Robertson, I want to ask you one question. You state that after the 1902 flood that the tracks of the railroad were elevated with a view to safety against high water. Was that elevation made with relation to the then existing conditions or with a view to conditions which might arise?

A. With a view to existing conditions, and the situations of the past, past experience with the situations there.

By Mr. Neville:

Q. You are not a civil engineer?

A. No, sir, not a civil engineer.

Q. And had nothing to do with planning and the construction of that dump?

A. No, sir.

(Witness excused.)

[fol. 381] D. E. WRIGHT, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name and occupation, Mr. Wright?

A. D. E. Wright is my name.

Q. What is your residence?

A. Vicksburg.

Q. And occupation?

A. Clerk and operator.

Q. For what road?

A. V. S. & P.

Q. Have you ever been in the employ^{ee} of the A. & V.?

A. Yes, sir.

Q. For what period of time?

A. From 1897 to 1907.

Q. In what capacity were you in the employ^{ee} of the A. & V.?

A. Work train conductor, charge of the work trains.

Q. During the time you were employed by the A. & V. were there any memorable floods in Pearl River?

A. Yes, sir.

Q. In what year do you recall such a flood?

A. In 1902 was the most severe flood.

Q. There were other floods?

A. Previous to that time and after that, but not so bad.

Q. Will you look at the photographs marked G-1 to G-8 inclusive and state whether or not they represent the conditions there directly after the crest of the flood in 1902?

A. Yes, sir.

[fol. 382] Q. What was the effect of that flood on the operations of the A. & V. Railroad?

A. It was out of commission from 36 to 48 hours, some days.

Q. What were you employed to do at that time?

A. I was on the work trains, in construction service.

Q. What happened to the actual road bed of the road?

A. It was practically washed out.

Q. How far out in the direction of Pearson was the road bed damaged?

A. About a mile or a mile and a half west of Pearson, about that far, near the 91 mile post.

Q. Did you say there were other floods in Pearl River besides the 1902 flood?

A. Yes, sir.

Q. When the water gets up in Pearl River, how far east does it go?

A. It comes up the railroad track near the 91 mile post as near as I can remember, up to the ties.

Q. How long were you working, according to your recollection, with the right of way after the flood in 1902?

A. We were in there a couple of years. After the flood we raised the track.

Q. You raised the track quite a bit after the flood in 1902?

A. From 2 inches to about six feet I think.

Cross-examination by Mr. Stone, for the defendant:

Q. Before the time of the flood in 1902 the track was all low?

A. Yes, sir.

Q. And under the low conditions it washed out?
[fol. 383] A. Yes, sir.

Q. You say that the water came out as far as mile post 91?

A. I think so.

Q. Would you say it never got further, you are not positive about that?

A. As near as I remember it was a mile or a mile and a half.

Q. From Pearson?

A. Yes, sir.

Q. Possibly a mile or a mile and a half?

A. Yes, sir.

Q. That was as near as the water went to Pearson?

A. Yes, sir.

Q. You worked there daily on that job?

A. Yes, sir.

Q. In that territory?

A. Yes, sir.

Q. Now, since that track has been raised, and that was over 20 years ago, there has been no wash out, since that time?

A. I have been away from there. I was there a year or two after that.

Q. Where do you work?

A. Across on the other side of the River, with the V. S. & P.

Q. But you were with the A. & V. before that?

A. Yes, sir.

Q. Do you know W. J. Kelly?

A. Section foreman.

Q. I don't know, he is W. J. Kelly?

A. Yes, sir.

[fol. 384] Q. Did you have a conversation with him yesterday?

A. Day before yesterday. Is that the one they call Grap.

Q. I don't know.

A. Yes, I saw him.

Q. Do you remember a conversation you had with him?

A. I talked to him, in a restaurant. I think it was.

Q. And in that conversation didn't Mr. Kelly ask you—

Mr. Monroe: We object to any conversation between this witness and any one else, it has no bearing on the case.

The Court: I will see what he is going to ask him.

Mr. Monroe: We except to the ruling of the Court.

Q. Didn't you state in that conversation, after he asked you what you knew about it, that you knew that you all were going to keep the Jackson & Eastern out of Jackson?

A. No, sir, positively, no, sir.

Q. That occurred here in the city of Meridian?

Mr. Monroe: We object to that as being incompetent, irrelevant and immaterial.

The Court: I don't think it is material at all, and it don't make any difference here, as what he says can't bind the road.

Mr. Stone: We would like to get it in the record.

The Court: All right.

Q. You remember that conversation?

A. Yes, sir.

Q. In a restaurant day before yesterday?

A. Yes, sir, I think it was. The first and only time I saw him [fol. 385] when I went in a restaurant to get a cold drink. I saw him then for a few minutes.

(Witness excused.)

(Court adjourned until the following Wednesday at which time the Court agreed to go to the proposed point of junction and view the situation.)

[fol. 386]

Wednesday, August 15, 1923.

The Court having gone to the point of the proposed junction the following testimony was then and there taken.

JAMES HURST, having been called by the defendant and being duly sworn, testified as follows, to-wit:

Direct examination by Mr. Neville, for the defendant:

Q. What is your name?

A. James Hurst.

Q. Where do you live?

A. Out here.

Q. Well, have you a store?

A. This is my place here. (Referring to a small store house.)

Q. This is your store?

A. This is my property.

Q. How far is the front of your store from the concrete highway?

A. It is about eight feet, I judge.

Q. How much higher is the floor of your store than the concrete highway?

A. It is, I judge, about a foot and a half. There it is, you can see for yourself, if you want to know.

Q. I want to get what you say in this court record?

A. It is about a foot and a half.

Q. How far is your store from where the road goes across Curran's Crossing?

A. From my store it is about 30 feet.

Q. How long has your store been here?

A. This store?

[fol. 387] Q. Yes?

A. It has been here two years.

Q. How long?

A. Two years, I should judge.

Q. Where was your store before you built this one?

- A. It was right here.
- Q. Was that store, your old store the same level as this one?
- A. It was lower.
- Q. Which was lower?
- A. The old store.
- Q. How much lower?
- A. I suppose three feet. Say $2\frac{1}{2}$ feet.
- Q. You mean that the floor was $2\frac{1}{2}$ feet lower?
- A. Yes, sir.
- Q. How long did you keep the old store?
- A. I judge, now, of course I can't just tell you how long, I am a poor hand to remember dates, but about 12 years.
- Q. How long have you lived in this vicinity?
- A. About 22 years.
- Q. You were here in 1902 at the time of the flood?
- A. In the big flood I was in Jackson in what we called the big flood.
- Q. Did you keep a store in Jackson?
- A. In Jackson, yes.
- Q. Has the water been in this store since it was built?
- A. In the other store.
- Q. Was the old store built after 1902?
- A. After 1902.
- [fol. 388] Q. Was the embankment of the A. & V. at this point changed after the flood of 1902?
- A. I think so, it was raised.
- Q. How much higher is the present embankment than it was in 1902?
- A. I judge eight feet, that is the best of my judgment.
- Q. Was there any embankment at all in the railroad in 1902?
- A. Yes, sir, a little, but not much though.
- Q. I don't know whether I asked you or not, but has the water been in your store since it was built?
- A. In the old store it has.
- Q. The water came up in your old store?
- A. Yes, sir.
- Q. How much, how deep was it in your old store?
- A. About 18 inches.
- Q. That would be a foot and a half?
- A. That is what I judge it to be, about that.
- Q. Where were you in 1921?
- A. 1921?
- Q. Year before last?
- A. Sir?
- Q. Did the water come up in your store then?
- A. No.
- Q. Did it get over this concrete highway?
- A. In the road here it didn't.
- Q. Where did it get over the highway?
- A. Between Farish bridge and Jackson, and over by Russel Cox'.

[fol. 389] Q. How far is that?

A. About a quarter.

Q. Of a mile?

A. Yes, sir.

Cross-examination by Mr. Monroe, for the complainant:

Q. You say it got over out here at Mr. Cox'?

A. Out here, yes, sir.

Q. And that is a quarter of a mile from Pearl River?

A. About that.

Q. East from here?

A. This is the place right in sight here.

Q. You say that the water in 1921 got over the concrete road?

A. Yes, sir.

Q. You say it got over between here and Pearl River bridge?

A. Yes, sir, it backed out here between here and Pearl River bridge.

Q. How far over, how much of the concrete road was it over between here and Pearl River bridge?

A. Between the end of the bridge—a short distance, probably 40 rods, 20 rods I believe, I am just telling you as near as I can get at it.

Q. Now, this piece of concrete road here, how much of it was out of the water in 1921?

A. I never said.

Q. How far up was it in 1921?

A. Right up to the edge of the concrete.

Q. About how far from the top of the concrete?

A. About three inches or four. It lacked about four inches coming to the edge of the concrete.

Q. It was over here in two or three places in 1923?

A. It didn't go over.

Q. Did it go over the Fannin Road, I mean the gravel road that goes out just north out here? That is the Fannin Road?

A. Yes, that is the Fannin Road. It went over that.

Q. It went over that?

A. Yes, sir.

Q. How many times in 1923 did it go over the Fannin Road?

A. Only once that I remember of. I own property up there.

Q. Did you say how deep it was on the Fannin Road?

A. It didn't stop the travel.

Q. How deep would you say it was?

A. About a foot.

Q. It wouldn't have been that deep if this dump had not been put along here?

A. Yes, sir.

Q. Didn't that make it higher?

A. Yes, sir.

Q. Putting this dump along here has the effect to raise the water?

A. Yes, sir.

Q. And the more dumps that are put the higher the water will go?

A. That is according to what waters you have.

Q. Now, Mr. Hurst, how high did you make the measurement, approximately, on your present store building as to where the water came to in 1902?

[fol. 391] A. I didn't measure it.

Q. Didn't you tell Mr. McLaurin, show him how high the water went in 1902?

A. Not in this store.

Q. You know Col. Sidney McLaurin?

A. Yes, sir.

Q. What did you tell him about the height of the water in 1902?

A. I didn't tell him anything.

Q. Didn't you show him the window on the front of your store and tell him the water got up to that sash?

A. The store was not here.

Q. But you estimated how far the water went?

A. Probably I did, but I don't remember it though.

Q. You don't recall it?

A. No, sir.

Q. Was the water in 1902 any higher than it was in 1921?

A. I think so, yes, sir.

Q. It was higher in 1902?

A. That was the big flood. I didn't own this property then.

Q. How high over the floor of your present store do you estimate the 1902 flood?

A. I don't estimate it. It didn't get up in this store.

Q. I am talking about this store.

A. I understand. I am talking about this store, too.

Q. How much higher was the 1902 flood than the 1921 flood?

A. I couldn't tell you.

Q. About how much?

A. I couldn't tell you. And what I do tell you is what I think, [fol. 392] just my judgment about it.

Q. Now, I would like to ask you if you didn't tell Col. Sidney McLaurin if you didn't estimate the 1902 flood would have been above the bottom bar of the sash here in your present store?

A. I don't remember, but I don't say that I didn't.

Q. You don't deny it?

A. No, of course, I don't.

Q. That is the bottom bar of the sash that I am pointing out to you. Have you got a tape measure?

A. That was my old store.

Q. Let's get the measure and see just what it is. Have you got a rule instead of a tape?

A. I don't remember telling Sidney that water——

Q. Here will you measure it?

A. Measure it yourself.

Q. Measure it here and I will check it, what do you make it?

A. I don't make it, measure it yourself.

Q. What do you make it?

A. I tell you the water was never up that high.

Q. Will you give me the distance?

A. What distance.

Q. Will you take the rule there and measure the distance so we can have it in the record, that is all that I want?

A. And I won't do it.

Q. Why don't you do it?

A. Measure it yourself. I will have nothing to do with it. Put the rule where you want it. I don't have to do it.

Mr. Monroe: I ask, if the Court please that the witness be asked [fol. 393] to make the measurement.

The Court: They want to get your testimony in the record.

A. There it is let them measure it. I don't suppose that the water was ever that high.

Q. I am simply asking what the measurement is? The measurement you made is the measurement to the top of the bottom bar just on the lower sash of the window of your store?

A. That is the measurement.

Q. And that is about $3\frac{1}{2}$ or four inches?

A. About that. But when I was talking to Mr. Sidney I want you to understand that I was not under oath, and I am under oath now.

By Mr. Neville:

Q. Mr. Hurst?

A. Yes, sir.

Q. Was this store here in 1902, 21 years ago?

A. No, sir.

Q. Was your old store here?

A. This store was built since the war.

Q. You say the old store was here?

A. Yes, sir.

Q. Mr. Monroe asked you about how high the water was in 1902?

A. And I don't remember anything about it.

Q. State whether or not the water in 1902 was as high as the point that Mr. Monroe had you to measure?

A. I would say not. I lived in my old store at the time.

Q. How high did it come in your old store?

A. About 18 inches.

[fol. 394] Q. And that is $2\frac{1}{2}$ feet lower than this measurement?

A. Somewhere about that. I am not telling you if that is correct.

By Mr. Monroe:

Q. You testified that this present store was built here three years ago?

A. I said somewhere along there.

Q. And that old store had been here 12 years?

A. I didn't say how long. I don't hardly know how long the old store was here.

Q. Then why did you say it was here 12 years on direct examination?

A. Somewhere along there.

Q. If this store here is three years old and the other one was here 12 years, what was here 15 years ago?

A. Probably nothing was here.

Q. In the big flood where were you?

A. I told you that I was in Jackson.

Q. Mississippi?

A. Yes, sir.

Q. Then what do you mean when you say that in the big flood the water came up in your old store 18 inches deep?

A. I was not here in the big flood.

Q. You don't know how high the water was in the big flood in 1902?

A. No, I was not here then. How could I tell you when I was not here.

Q. Mr. Hurst, your store right now is in the angle between the concrete road and the A. & V. embankment?

[fol. 395] A. Yes, sir.

Q. Right here at Curran's Crossing?

A. Yes, sir.

Q. Do you own any property in this neighborhood?

A. Yes, sir, I own this property.

Q. Have you negotiated for the sale of any of this property to the Jackson & Eastern?

A. I have already sold part of it.

Q. Where was the piece of property you sold?

A. East of here, some property belonging to me.

Q. You figure that if the Jackson & Eastern comes across your property that the value will be increased?

A. Of course, it won't be hurt.

Q. You figure there will be an increase?

A. I don't figure that it will make much difference.

Q. But you don't feel that your property will be hurt?

A. No.

Q. How far from you is this proposed junction?

A. I couldn't tell you.

Q. Give me your best judgment?

A. Go out there and measure it.

Q. Won't you tell me?

A. Go measure it.

Q. I will let you go if you are going to be contrary.

By Mr. Neville:

Q. I don't know whether I asked you or not, but I will ask you how high the concrete road was raised?

A. I couldn't tell you, about four feet I judge.

[fol. 396] Q. In front of your store?

A. Yes, sir, I judge it was raised about four feet.

Q. Since 1902?

A. I think so.

(Witness excused.)

(Further testimony was postponed until court should have convened the following morning at nine o'clock at the Lauderdale County Courthouse.)

[fol. 397]

Thursday, August 16, 1923—nine o'clock a. m.

A. A. Woods, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name, residence and occupation, Mr. Woods?

A. A. A. Woods, residence Cincinnati, occupation, Chief Engineer for the maintenance of the western lines of the Southern Railway.

Q. How many miles of track, approximately, have you under your supervision?

A. About four thousand miles.

Q. Have you any engineer's decree from any education institution?

A. Yes, sir, Tulane University of New Orleans.

Q. How long have you been engaged in railroad engineering?

A. In the neighborhood of 27 years.

Q. Have you been engaged in any other occupation since your graduation from the Tulane University?

A. No.

Q. You got your decree there in 1895?

A. 1895.

Q. When you left Tulane University where did you go, give a sketch of the positions you have occupied since you left school?

A. I was first out in the summer of 1895 surveying the New Orleans & Western Railroad, the part known as the New Orleans Terminal [fol. 398] Company, and the next year, 1896, I went to work for the New Orleans & Northeastern Railroad as draughtsman in the engineer's office. In January, 1898, I went to the A. & V. and the V. S. & P. as draughtsman in the maintenance and way department. I was there for about 18 months. I then went back to the Northeastern as Assistant Engineer. I was then made resident engineer for the A. & V. and the V. S. & P. in November, 1901, and I remained in that position until July, 1913.

Q. That was resident Engineer of the A. & V. and the V. S. & P.?

A. From 1901 to 1913, yes, sir.

Q. Then what did you do?

A. Then I went to the New Orleans & Northeastern as resident engineer and remained in that position until February, 1915, when I was made Superintendent of the New Orleans & Northeastern and kept that position until April, 1919. In the meantime the South-

ern Railway Company had taken over the New Orleans & Northeastern and I went to Cincinnati in 1919?

Q. And have been there continuously ever since?

A. Yes, sir.

Q. Have you any connection with the A. & V. Railway Company?

A. No.

Q. I understood you to say that you had experience as Superintendent of the New Orleans & Northeastern, for what time was that?

A. From February, 1915, until April, 1919.

Q. During that period did you have actual charge of the operations of the road as superintendent?

A. Yes, sir.

Q. During your connection with the A. & V. Railway Company, [fol. 399] did you have occasion to become familiar with the situation of that line between Jackson, Mississippi and Pearson, Mississippi?

A. Yes.

Q. Did you have occasion to observe the conduct of Pearl River in connection with that particular piece of territory?

A. Yes, sir.

Q. Will you tell us what your experience indicates to you in regard to whether it might be expected, or what might be expected in Pearl River bottom?

A. Well, the water there in Pearl River bottom was out of the banks of the River practically every year, sometimes twice a year. Of course, it varied as to the actual height of the water. In the spring of 1902, shortly after I went over there, we had a very heavy flood which went over the track at one time, in places, I think the extreme depth of the water was from six to eight feet. We were tied up there quite awhile. Then it was decided to raise the grade, and we raised it over to, or nearly up to Pearson station.

Q. Look at the photographs, G-1, G-2, G-3, G-4, G-5, G-6, and G-8 and state if they correctly represent the conditions on the A. & V. Railroad in Pearl River bottom between Pearson and Pearl River after that 1902 flood you spoke of?

A. Yes, sir, these correctly show the conditions there after the water had subsided to some extent. This is not at the extreme high water period at that time.

Q. What was the effect of the high water upon the operations of the road?

A. It stopped the operations for quite a number of days. I don't [fol. 400] remember exactly how long at this particular place. But we had quite a washout and it turned the track over and washed it off probably 100 feet in some places.

Q. Does your experience as a railroad engineer of a railroad operating in Pearl River bottom indicate anything to you as to the necessity of putting the grade of the road above high water?

A. It is necessary to do that in order to continue in operation on account of the liability of overflows in this Pearl River bottom.

Q. You are familiar with the height to which the A. & V. Railroad embankment was elevated after the 1902 flood, are you not?

A. Yes, we elevated it so that the bottom of the stringers of the trestles would be above high water, the high water line.

Q. Please tell the Court how the height of the elevation of that road there in Pearl River bottom compares with the elevation required by a railroad in that locality?

A. I think it has the proper elevation now, what would be considered for good operation.

Q. In order to conform to good operation would it be necessary for a railroad embankment to be approximately the present elevation of the A. & V.?

Mr. Stone: We object to the leading question.

Q. Please state to the Court about what height, as compared to the height of the A. & V. embankment at the present time a new road would have to elevate its track?

A. It ought to be approximately the same elevation as the A. & V. [fol. 401] Q. You are familiar with the physical conditions of the A. & V. between Pearl River and Pearson?

A. Yes, sir.

Q. The A. & V. Railroad at Curran's Crossing is on a grade or fill of from 8 to 10 feet, and it is on a curve, and the crossing is between two trestles, and is in Pearl River bottom. I would like to ask you if in view of these facts you consider the point, approximately at Curran's Crossing as a proper or improper place for a junction, say of the A. & V. Railroad and a proposed new railroad built from Sebastopol, Mississippi, to this point east of Pearl River?

A. I consider that point for a connection probably the most objectionable that could be picked out between Pearl River bridge and Pearson.

Q. You have studied this map, Exhibit "F," which lies on the table before you which shows the proposed point of connection?

A. Yes, sir.

Q. State why you say that the proposed point of connection is probably the most objectionable point that you could find between Pearl River and Pearson?

A. There is a trestle just west of the crossing usually known as Farish Bridge, and when the water of Pearl River, in its high stages, it goes over the trestle with great force, seeking the line of the river below the A. & V. and in connection with what we already have there this proposed junction is put in, that would tend to increase that current and volume of water going over the bridge which would [fol. 402] have a tendency to cut out the embankment at the ends of the bridge.

The connection is also on a curve, and any switch turn out from the main track is more difficult on a curve, it is more difficult to do switching on a curve, it is more apt to cause de-railment that would be on a tangent track. Another difficulty about the connection is the super-elevation of the outer rail on the curve. In this case the super-elevation of the track coming in would be on one side, and the super-elevation of the A. & V. would be on the other side. That would be difficult.

Q. Explain to the Court what would be the effect of that condition?

A. The effect would be to break the old elevation of the A. & V. to make this connection safely.

Q. Are there any other objections to that point from your observations of the conditions there?

A. There are objections to these trestles, one on each side of the connection. If it was necessary to do switching at that point, set out and pick up cars, it would leave the train hanging over one of the other of these trestles, and the train men would be in danger if they attempted to couple or uncouple cars on the trestle, or even if they attempted to go by the train on the side of the trestle.

Q. In view of all these difficulties which you have enumerated what in your opinion as a railroad engineer and a railroad operative would you say as to the desirability or undesirability of this proposed junction?

A. It is decidedly undesirable.

[fol. 403] Q. Are there dangers to be expected as a result of placing that junction point at that place?

Mr. Stone: We object to the leading question.

Mr. Monroe: Strike out the question.

Q. What have you to say in regard to any dangers that might be expected at this place of junction?

A. It is always an element of danger, a greater element of danger to locate a switch turn out on a curve rather than on a straight track. In this case, also, there is the added danger of approaching trains operating from the east on account of the view being obstructed by the curve. The engineer couldn't see what the conditions were at the time at the location of the connection. And there is a further objection on account of Curran's Crossing, giving an added danger in switching done at that point on account of this public crossing.

Q. If that junction were made at that proposed point, what, in your judgment as an engineer, would be the necessary effect upon the traffic of the A. & V. Railroad passing that point?

A. It would have to be slowed, the speed would have to be reduced.

Q. Approximately what would it add to the time of the trains of the Alabama & Vicksburg Railroad?

A. Several minutes.

Q. It has been suggested that in order to obviate the difficulties and objections to the proposed point of junction that the yard board of the A. & V. by shifting it to the east of the junction point. I would like for you to state to the Court whether or not you have [fol. 404] considered that suggestion in connection with the lay out of the A. & V. Railroad, and whether you consider that a reasonable suggestion?

A. No, I do not think it is reasonable. In the first place the yard limit board should be placed beyond the last switch in the yard somewhere between 1,500 and 3,000 feet, depending on the

physical conditions, so as to give approaching trains, approaching the yard an opportunity to reduce the speed if they find the track obstructed. In this case the yard limit board should be moved entirely around the curve east of this connection on the straight track in order to give the engineer on the train approaching a proper view of it.

Q. You mean it should be if it is changed at all?

A. It should be for proper operations moved that far if it is moved at all. And if the yard limit is extended from the present yard limit approximately a mile that would mean the slowing down of the trains to such an extent that it would increase the time of the trains from five to six minutes.

Q. The trains of what road?

A. Of the Alabama & Vicksburg Railway.

Q. What effect would that have on the traffic?

A. It would retard it to that extent. This stretch of track about six miles in length, a part of it is through the City of Jackson where slow speed is required anyway, so it would be a serious thing to reduce the speed for that additional mile.

Q. I believe I asked you, but I am not certain, whether you consider the suggestion that these objections be met by moving the yard board to the east of this proposed junction is or is not a [fol. 405] reasonable suggestion?

A. I don't think it reasonable. I wouldn't like to operate engines, switch engines if the yard line was extended out over this curve and the view was obstructed, without having train orders. Switch engines are permitted to operate within the yard limits without orders from the office and that would add an element of danger if the switch engine is on the main track. The trains approaching the yards are required to reduce the speed so as to bring the train under control so as to be able to stop in a short distance, but there is always an element of danger, that a man might fail to do that, and that would cause an accident by running into the switch engine that was holding the main track.

Q. What would be the approximate distance from the present last switch in Jackson, in the Jackson yard, to the yard limit board as removed east?

A. From the present last switch?

Q. Yes?

A. To the location that the yard limit board would have to be moved?

Q. Yes?

A. I couldn't say exactly, but it would be something over a mile.

Q. Now, in that distance from the last switch to that new location of the yard limit board what tracks would there be of the A. & V. and what outlets, from the distance to the last switch from the location of the new yard limit board?

A. There would be no track except the main track.

[fol. 406] Q. What bearing would that have on what you have just said? About the operation of yard engines out there?

A. It would mean that there would be no place for the switch engine to operate out there between this last switch and this proposed connection. It is considered that the yard system of tracks are such that the switch engines can get off the main line in very short time, clear the main track, but there would be no place on this long line of single track for them to switch off and clear the main track.

Q. Are you familiar with the conditions prevailing in the Meridian yard at the present time joining the yard of the A. & V. with the Northeastern?

A. Yes.

Q. Are you familiar with that particular portion of the yard where the old Meridian & Memphis, now the Gulf, Mobile & Northeastern, goes overhead?

A. Yes.

Q. Are you familiar with the track at grade at that approximate location which goes out of the A. & V. line and makes the connection into the G. M. & N.?

A. Yes.

Q. Will you please state to the Court whether or not the conditions prevailing at that track are in any way at all comparable to the conditions that would prevail at the proposed junction point here in controversy?

A. They are not to be compared to this proposed connection at Pearl River. This connection in the west end of the Meridian [fol. 407] yard turns off the straight track, and it is also in the present yard limit.

Q. Mr. Woods, I show you the record in the condemnation proceedings here sought to be enjoined, and ask you to examine it, particularly the paragraph relating to the description of the land sought to be condemned and the proposed method of interchange.

A. I don't see anything here to indicate how the interchange business is to be handled.

Q. Are you familiar with the methods of making connections?

A. Yes.

Q. Is it usual and customary for the main line of one road to enter the main line of another road in making a connection?

Mr. Stone: We object to that. This does not provide for any such thing.

The Court: I will overrule the objections.

Mr. Stone: We except to the ruling of the Court.

A. The proper method for locating an interchange would be to put in side tracks for the interchange of the business. This is the usual course, to put in side tracks, one for receiving and one for delivering the cars. The road delivering would put the cars in one track and they would stand there until such time as it was convenient for the other road to pick them up. I can't see any such provision in this.

Q. Is there any provision in there for side tracks?

A. I can't see any such provision. It looks like a main track connection only.

Mr. Stone: We move to exclude that statement of the witness. It is a witness' construction of an instrument, and also, because the [fol. 408] application for condemnation simply describes a switch connection, not an interchange track. It is not necessary for the application to describe the interchange track, and I submit that this is a matter for the Court to decide.

The Court: I understand your position, but I will overrule the objections and let the testimony go in.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. In the making of this connection by putting in these receiving and delivering tracks, would or would not the main line of one road run into the main line of the other road?

A. It would not.

Q. The main line in each instance would run into what track?

A. The interchange tracks, the side tracks.

Cross-examination by Mr. Stone, for the defendant:

Q. Mr. Woods, you were working for the A. & V. at the time the M. & M. crossed its tracks over here in the west end of town?

A. I think it was, either for the A. & V. or the New Orleans & Northeastern.

Q. You made just such a strenuous fight at that time to prevent the M. & M. crossing the tracks of the A. & V. as you are now making to this connection at Jackson?

Mr. Monroe: We object to that, as it has nothing whatever to do with this question.

The Court: I sustain the objection.

Mr. Stone: We except to the ruling of the Court.

[fol. 409] Q. Mr. Woods, where is the yard board indicating the present yard limits of Jackson east of the yards? Tell us where it is with respect to the River, and so on?

A. My recollection is that it is between Farish Bridge and Pearl River. It is this side of Pearl River. That is my recollection.

Q. On the east side of Pearl River?

A. Yes, sir.

Q. And some distance from Pearl River?

A. That is my recollection.

Q. Of Pearl River Bridge?

A. That is my recollection.

Q. Do you know exactly where it is located?

A. I don't recall.

Q. Is it somewhere close to Farish Bridge?

A. I can't recall exactly where it is. It is between Farish Bridge and Pearl River.

Q. In approaching that board from the west you come around one of the stiffest curves on the road?

A. From the west, yes, sir.

Q. In approaching that board from the east you come around the same curve on which we want to make this connection?

A. Yes.

Q. Isn't it a fact that this road continues to curve on to Pearson?

A. How was that?

A. Don't this road continue to curve; isn't it a continuous curve from Pearl River to Pearson?

[fol. 410] A. There are several curves in that territory.

Q. Isn't it almost continuous?

A. I wouldn't say that. I would say there were several curves, but they are not continuous.

Q. Isn't it a fact that this railroad is thrown up on a dump, the A. & V. from Pearl River for some miles to the east?

A. Several miles.

Q. And that several miles would put you to Pearson station to where you would get on high ground? And if you wanted to make a connection anywhere between Pearl River, east of Pearl River, it would be on a fill unless you went right into Pearson Station? And you will make it on a curve?

A. I would not, I would make it on a tangent.

Q. Isn't it a fact that it would be on a curve, if it was on that piece of track?

A. It is not a fact.

Q. How long since you worked on the A. & V.?

A. I left there in 1913.

Q. You left here?

A. I left their service.

Q. Mr. Woods, have you been out to look the situation over since this is law suit has been on?

A. No, I don't think so, but I don't know how long the law suit has been on. I didn't hear of it until about a week ago. I hav-n't been over there since then.

Q. Have you examined the lay of the land, north and east of the A. & V. track, and know what the conditions are?

A. I have known the conditions there during high water, but not [fol. 411] any great distance up the River.

Q. And you only saw what you could see from the railroad?

A. Yes.

Q. As an engineer you didn't go to the east and north to figure on the route for a railroad?

A. No.

Q. Now, as an engineer, if you were an engineer for a railroad, this Jackson & Eastern, and as an operator, and the destination point you were going to was Jackson, connecting from Sebastapol, at a point north, running up Pearl River, parallel with Pearl River, would you consider it good railroading, either from an engineer's standpoint or as an operator's standpoint, turning and going back four miles to Pearson to make that connection with the A. & V.?

A. I would consider that the proper location to go into Jackson by the A. & V. would be to follow the higher ground along the edge of the hills near Pearson and get a connection with the A. & V. there.

Q. Do you know where the high grounds are?

A. Along the A. & V.

Q. I am talking about if you come this distance from the north and get down here to Pearl River going to Jackson?

A. I don't know further up the stream.

Q. Then you can't testify from an engineer's standpoint beyond what you have seen?

A. Except as to this connection with the A. & V.

Q. I am asking you from the point of consideration, if it is good engineering when you are going west to Jackson to turn and go [fol. 412] back four miles east to Pearson to make this connection with the A. & V.?

A. That would not be considered an engineer's question. I think this is a practical question.

Q. As an operator don't you know it would not be practical to make this four mile trip back to Pearson in order to make this connection?

Mr. Monroe: We object to any hypothetical questions.

The Court: I overrule the objections, and will hear the testimony.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. That I may make it clear. Take a line of railroad that now runs parallel with Pearl River coming from the north and going into Jackson——

Mr. Monroe: We object. Nothing has been said about them going into Jackson.

The Court: Let him ask the question.

By Mr. Stone:

Q. Take the map that you have before you, Exhibit "F" in this record, and take the line that I am now tracing with my finger, the A. & V. Railroad line, and take the line that I am now tracing as the line established for the Jackson & Eastern Railroad. Where is Pearson?

A. Pearson is further east than this map extends.

Q. Now, if the destination of this road, its terminal is to be Jackson, I will ask you to state to the Court whether or not it would be good railroading from the standpoint of an operator, to change the road and run it to Pearson, when the terminus of the road is to be [fol. 413] Jackson?

Mr. Monroe: We object.

The Court: I will let him answer it.

Mr. Monroe: We except to the ruling of the Court.

Witness:

A. I don't think it would be proper to turn back four miles to Pearson, but it would be proper to turn towards Pearson before you got to this point.

Q. Say that the line of railroad is already laid out, established and granted by the interstate commerce commission and chartered by the State of Mississippi—

Mr. Monroe: We object, none of these facts are shown.

The Court: I overrule your objections.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. They are going to be shown. Suppose that is true, to come in the direction that this map shows, then what would you have to say?

A. I would consider whether or not it was justifiable to relocate this part of the line.

Q. I am asking the question based on its present location, is it feasible and practical to go back four miles to Pearson to make this connection?

A. It is feasible and practical to relocate it.

Q. I didn't ask you about re-locating any of it. You are not a lawyer are you?

A. I am not.

Q. I am asking you simply from the present location of the road, [fol. 414] whether it is feasible and practical to turn the road back four miles to make this connection?

A. I can't grasp what you mean. If you don't mean to re-locate any of it you will have to make the connection here.

Q. I asked you as an operator if it would be good railroading if you were going west to turn back and parallel the track four miles to make the connection?

A. That would not be a practical way to do.

Q. That wouldn't be practical railroading?

A. No, not under those circumstances.

Q. And it wouldn't be good railroading either?

A. No.

Q. You haven't been down there since 1913 to investigate as an engineer just what effect this Jackson & Eastern dump would have upon the A. & V. track, the proposed dump?

A. I have been over the A. & V. property several times a year.

Q. I didn't ask you that. I asked you if you had been back there to investigate as an engineer to ascertain what effect the dump of the Jackson & Eastern would have on the property of the A. & V. with respect to turning the water on it?

A. I have not been there for that purpose.

Q. Do you know how many openings are provided for in the Jackson & Eastern dump?

A. I do not.

Q. Do you know what effect that concrete road that is there now has been on the water, Mr. Woods?

A. It tends to impede the flow of the water.

Q. Of your known knowledge, have you been there to investigate [fol. 415] that, Mr. Woods?

A. I haven't been there to investigate that, but I know what the effect of any obstruction on the flow of water is, such as that road is.

Q. Do you know how high the road is?

A. I don't recall.

Q. Do you know how many openings in the concrete road?

A. I do not.

Q. Do you know how high the Fannin Road is, do you know that?

A. I don't know.

Q. If this concrete road has been built and the Fannin road has been built, both roads being public highways, they have been built since you were there?

A. I don't know just when they were built. I don't recall. Maybe since I was there.

Q. You have made no investigations since you left there in 1913?

A. I have not.

Q. Now, you said awhile ago that this board would have to be moved how far east of the River?

A. I said according to your idea that it should be moved——

Q. To what extent did you say?

A. I said approximately a mile.

Q. A mile?

A. Yes, sir.

Q. Then your idea would be to locate it where there would be no curve?

A. Locate it on the straight track.

[fol. 416] Q. So the approach will be from the straight track?

A. Yes. It is always best to have the approach from the straight track so the engineer when approaching on his train can get a view of it.

Q. Does it make any difference where the board is on a straight track or not?

A. It does. It ought to be on a straight track so the engineer and fireman can see it. It might be that it could be a few feet around the curve and still be visible from the straight track.

Q. Don't you know that where it is now located that it is on a curve from the east, all the way to it?

A. I do not know that.

Q. Are you willing to swear that it is not a curve all the way to it from the east?

A. It is located on a straight track between Farish Bridge and Pearl River.

Q. In approaching it, it is on a curve both from the east and from the west?

A. The only way it is effected at all is from the east.

Q. Then in case the board is moved it would only effect the approach from the east?

A. Yes.

Q. And in the approach from the east the train is on a curve over the curve where we are seeking this connection, until we get in a very short distance of it?

A. The location——

Q. Just answer my question. At the present location, isn't it a [fol. 417] fact that the train is run on a curve in going west until it approaches within a very short distance of it?

A. My recollection is that it is quite a number of 100 feet in the curve to the yard limit.

Q. You mean to the board?

A. Yes.

Q. How many hundred?

A. I couldn't say exactly. I say several hundred.

Q. What do you mean by several?

A. At least three or four hundred feet.

Q. You are sure that it is that far?

A. Reasonably sure.

Q. Now you stated objection was that it was on a curve. How many curves have switches located on them on the A. & V. Railroad from Jackson to Meridian on the outside of the curve, as this one is sought to be located?

A. I couldn't say. However, that is no reason, in my opinion that we should have to add another element of danger.

Q. But the A. & V. Railroad put switches there at these other places for its own convenience?

A. They probably did.

Q. Don't you know they did?

A. During the time I was with the A. & V. we never located a switch on the outside of a curve, but put them on the inside, even at an increased cost.

Q. But the A. V. has located at least three switches on the outside of curves between this point and Meridian?

A. I expect so.

[fol. 418] Q. Isn't it a fact that every other road that you know anything about have switches located on the outside of curves?

A. There are quite a number of them. It is not impossible, but it is simply an undesirable proposition to locate a switch on a curve.

Q. There is an element of danger in railroading at all?

A. Yes.

Q. Now, you stated that the trains would lose time if this connection was put there in going from Pearson to Jackson and in going from Jackson to Pearson. Isn't it a fact that the trains, passenger trains, both local and through trains, make up as much as a half hour between Meridian and Jackson, when they leave Meridian a half hour late, they make that up between Meridian and Jackson?

A. I don't know that.

Q. Don't you know that they do make up as much as a half hour?

A. I don't know that.

Q. Would you say that they do not?

A. I would say that I don't know.

Q. Now, you were talking about the look out at this switch. The only look out that will be necessary to be kept for that switch, if it is simply an interchange switch connection will be in case of switching cars in and out, and it wouldn't effect the trains running there?

A. It would of course take time when switching was being done there.

Q. I say when it is not being used, it would not effect the trains running there?

[fol. 419] A. I would say it would have the effect of reducing the speed at that connection. It would be impossible to keep uniform speed on it.

Q. Isn't it the best place to reduce the speed of the train, along the railroad line between here and Jackson, on that sharp curve and the high bridge, and the curve on this side of the river, for safety?

A. No, there is plenty of room between Pearl River Bridge before you get to the curve.

Q. You have a curve on this side, and that would be a good place to reduce speed?

A. If the trains have to reduce their speed on every curve they will never get anywhere.

Q. Isn't it a fact that they run over a switch at Pearson, and Rice Hill and Chunky without any reduction in speed at all?

A. Some of these go fast, but probably with no more speed. At these side track there is an elevation maintained on the outer rail of the main track to protect the trains from de-railing.

Q. Do you know what the situation is going to be at this track when it is finished?

A. I can't tell. The assumption, from your speaking of going to Jackson would be that the trains of the Jackson & Eastern were going to use the tracks of the A. & V.

Q. You have been testifying about a lot of danger and the thing you had in mind was that this is to be a connection of the main line of the Jackson & Eastern with the main line of A. & V., and that the Jackson & Eastern expected to use the A. & V.'s main track, [fol. 420] isn't it?

A. What I testified to were the actual conditions as I saw them by reason of the switch connection. I assumed that, from your question, it was the intention, their intention to use the line of the A. & V. into Jackson, but if it is to be purely a question of interchange, I can't see why the main line connection would be put in at all.

Q. I didn't ask for any argument. I simply asked you if you didn't have in mind that this was to be a main line connection of the Jackson & Eastern with the A. & V.?

A. I had that impression.

Q. And you had the impression that the Jackson & Eastern would run its trains on the A. & V. track into Jackson?

A. Yes, I had that impression.

Q. And that was the impression that you testified under all the way through?

A. Yes, sir.

Q. Now, assuming, Mr. Wood, that proper and suitable interchange tracks will be built and that this connection that we are now seeking is simply one for these interchange tracks, which will not be used as the main line of the Jackson & Eastern, but just an ordinary interchange connection, then your testimony will be quite different?

A. In that case I see no excuse whatever for such a connection as this. From the methods shown on the plans I see only a main line connection.

Q. I am not asking you for your construction of the instrument [fol. 421] at all. I am just asking you if this here interchange switch connection, irrespective of your interpretations of any plan if this is to be simply an interchange connection, then your testimony would be different?

A. I would say that I see no excuse for making the main track connection at all, a connection of the two main tracks.

Q. Suppose there are no main track connection at all, only a connection, only an interchange connection, then, I say, would your testimony be different?

A. Not at this particular location, not very different.

Q. So you modify it, when you say "very"?

A. It would make some difference.

Q. Of course, Mr. Wood, whether the embankment of the Jackson & Eastern effected the A. & V. Railroad by turning water again, it would depend altogether upon the number of openings, trestles or conduits, for the water to pass through?

A. Not at all. If they build the entire line through this bottom of open trestle it will have a tendency to impede the water.

Q. Suppose they already have a concrete road in there, that is thrown up approximately to the height of the high water for the past four or five years, and that road lies between the Jackson & Eastern and the A. & V., then all that the Jackson & Eastern embankment would have to do would be to take off the water that passes over this highway?

Mr. Monroe: We object. This is a hypothetical question. In the first place this concrete road is not built approximately to the height of the high water, there is testimony here that it has gone over [fol. 422] it 18 inches.

The Court: Let him ask the question again.

By Mr. Stone:

Q. Suppose that there is a concrete public highway built up between the Jackson & Eastern Railroad, now proposed, and the A. & V. Railroad, that is built approximately to the high water level for the past four or five years, then, if this is the case, the Jackson & Eastern would simply have to take care of such water as passed over the concrete road?

Mr. Monroe: We object to that statement of counsel, that this concrete road is built approximately to the high water mark. It

is uncontradicted testimony that it went 18 inches over the concrete road for a distance of something over a mile.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. I think every piece of embankment put there tends that much more to change the natural flow of the water.

Q. I asked you if under these conditions, that all the water that the Jackson & Eastern would have anything to do with would be the water that passed over the concrete road, over or through it?

A. That's true, yes, sir.

Q. You said awhile ago that if the Jackson & Eastern were trestled all the way through, that it would have a tendency to change the natural flow of the water. You don't mean to state that it would effect the railroad right of way?

A. I don't mean it would affect the A. & V. I meant to illustrate [fol. 423] that whatever trestle they did have would have an impeding effect on the flow of the water.

Q. As an engineer have you investigated there to see in what direction that water naturally flows, and can you testify now in what direction it naturally flows from the River?

A. The flow, as soon as the water rises above the banks in that location begins to go across under Farish Bridge, cut across there, rather than flow back to a point around Pearl River Bridge.

Q. And that would tend to push the water in what direction?

A. Away from the River.

Q. In what direction?

A. To the East.

Q. That depends on the location?

A. In that particular location. The part that turns further east goes across the A. & V. with a heavy current.

Q. Several miles east?

A. Yes, sir, a good deal of it.

Q. And the tendency is to go way from the River towards the east?

A. Yes.

Q. The point I am driving at is that the land to the east of the River, some distance east, is lower than the land right at the River?

A. I don't think it is much lower. I think it is a question of the volume of water going down the short cut there.

Q. Do you know whether it is any lower or not? Have you been there and investigated it?

A. I can't recall, but I know it is not lower than the land next to the River in some places, but I can't tell you about the particular [fol. 424] grade of it.

Q. I will ask you if you don't know it to be a fact that there is water that goes below, runs into part of the low ground and runs under the railroad and never gets to the River until it gets below the railroad, and don't that indicate that the land is lower than the land next to Pearl River?

A. Not necessarily. In this locality the little branches and streams flow down that way and go into the River. Little ravines,

Q. Have you been out there as an engineer and investigated so as to know the exact lay of the land?

A. Not the exact lay of the land, I had no occasion to do so.

Q. When was the trestle east of Curran's Crossing put in?

A. That trestle was put in after the flood of 1902, that was when it was put in to its present length. There might have been a very small trestle there before that time, but that was when this one was built.

Q. How about the other trestle between there and Pearson?

A. There were two bridges on one of the curves and they were combined into one bridge, and the other trestle between there and Pearson was extended to 1902 when we raised the grade of the road.

Q. Do you know how many years it has been since we had another flood like the 1902 flood?

A. No, I don't recall any other.

Q. That 1902 flood was an unprecedented flood?

A. I think so.

Q. How high was your embankment raised after that 1902 unprecedented flood?

[fol. 425] A. How high was it raised?

Q. Yes? To the east of the River, say?

A. My recollection is that in places it was raised somewhere between six and eight feet, that, of course, varied because the old road grade was not level.

Q. Didn't you raise that clear on around practically to Pearson?

A. We raised it on out to the higher ground.

Q. To Pearson?

A. Nearly to Pearson, I don't recall how far.

Q. The bridge was raised how high?

A. The trestles were raised to conform with the grade. We put the trestles up so that the bottom of the stringer was clear of the highwater line.

Q. So the bottom stringer would clear it?

A. Yes, sir.

Q. How much higher is the railroad bridge than the public road bridge, Farish Bridge?

A. I can't say since the highway bridge has been rebuilt. I think the railroad bridge was about four feet higher than the highway bridge.

Q. But you don't know about the new one?

A. No, I couldn't say as to the new one.

Q. You spoke of running switch engines on the main line. To extend the yard board out so as to include this piece of line, there would be nothing uncommon about that, would there?

A. Why, it is done.

Q. Isn't it done by all railroads?

[fol. 426] A. Under certain circumstances when there are no physical objections to extending the yard board, and there are no objections to putting your yard board out on the main line and running your switch engines on the main line.

Q. Adding to the yard by moving the board?

A. It is done, but it has a good many objections.

Q. It is done here at M. & M. on the A. & V.?

A. The yard limit board is not far from the last switch. The switch tracks run within a reasonable distance of the yard limit board.

Q. Mr. Woods, isn't it a fact that the yard board is out beyond your yard on the main line of the A. & V. and cars are transferred from the M. & M. to the main line of the A. & V.?

A. And is, as I testified, about 1,500 to 3,000 feet of the last switch.

Q. The main line of the railroad within the yard limit is used in switching?

A. Yes.

Q. Isn't it a fact that in Mobile in switching cars to the K. C. that there are eight miles of the M. & O. used in switching cars?

A. They may have a yard along there.

Q. I mean, don't they use the line eight miles?

A. That is unusual, without switches over which they might operate.

Q. But they do use eight miles of it?

A. Yes.

Q. Isn't it a fact that the road that you are now the superintendent [fol. 427] of at its switch connections and interchange connections uses in many places the line of its right of way, the A. G. S.?

A. Yes, sir.

Q. You spoke of the switching there at Curran's Crossing. It is nothing unusual for a railroad to do switching across crossing?

A. It is not.

Q. It is done right here in the heart of the city of Meridian?

A. Yes, sir.

Q. That is nothing unusual?

A. No.

Q. You lived in Meridian a long time, didn't you?

A. I lived here about six months in 1897.

Q. You know that 22nd Avenue is the main thoroughfare going south?

A. Yes.

Q. Across a crossing of the railroad track is one of the main thoroughfares for people traveling south from Meridian?

A. Yes.

Q. That is still true?

A. Yes.

Q. You bring trains on the A. G. S. track and break up trains of the A. G. S. on that track?

A. No, we don't break up the A. G. S. trains.

Q. You switch cars?

A. We switch and pull cars, we don't break up the trains.

Q. You switch engines?

A. Yes.

[fol. 428] Q. And the A. & V. does the same thing?

A. The A. & V. doesn't operate its own engines here. This is a joint operation.

Q. They are operated for the A. & V.? It is done for across the main thoroughfare of the City of Meridian, south?

A. Yes, sir.

Q. And that is done in every city you go into?

A. Unfortunately, it is.

Q. As a train operator and also as an engineer, an engineer to know the rules of the road?

A. I am a civil engineer.

Q. He doesn't have to know the train rules.

A. No.

Q. Don't you know it to be a fact that in the case of switching and around curves that the fireman is required to be on the look

A. Yes, supposed to be so far as he can, so far as it is possible his other duties.

Redirect examination by Mr. Monroe, for the complainant

Q. What are his other duties?

A. His particular duty is to put coal in the fire box and water in the boiler.

Q. In case of going around a curve and the fire box needs where is his duty?

A. His duty is to put coal in the fire box.

Mr. Stone: I asked nothing about running a train around a cu

Q. Suppose you were switching and there was no fire in the [fol. 429] box, what would that mean?

A. It would be impossible to switch until there was some fire in the fire box.

Q. You were asked whether or not cars were switched across crossing and you said that it was done. Please state to the Court whether or not it is desirable?

A. It is very undesirable.

Q. Please state what efforts are made to eliminate it?

A. Efforts are frequently taken. Operations have been considered for a good many years.

Q. Have there been any actual operations occurring at any place in Meridian?

A. Yes, sir. A subway was put through at one of the crossings on 26th Avenue, I believe it is.

Q. You were asked whether it was customary and usual, I believe to include a portion of the main line in the yards, and you answered that it was customary to include a portion of the main line in the yard. I will ask you whether or not it is customary and usual to include in the yard any such strip of the main line unsupported switches and turn outs as would, in your judgment, have to be included in the yard, if the yard board was moved to the proposed location east of Farish Bridge?

A. It is sometimes done, but it is objectionable.

Q. How does that distance of unsupported main line that would

be in the yard compare with the distance of unsupported main line in the yard adequate to good railroading, is it longer or shorter?

A. I would say that it is longer.

[fol. 430] Q. You would have from your last switch in Jackson to your yard board approximately how much additional distance, in case this board was moved?

A. I think the yard limit under these conditions should be moved a mile further east, and that makes more than a mile from the present switch.

Q. So you would have an additional solid mile?

Mr. Stone: Don't lead him, he don't have to be led.

Q. What did you tell me was the distance from the last switch to the yard board, the usual distance?

A. It varies according to the physical conditions from 1,500 to 3,000 feet.

Q. And beyond 3,000 feet would be unusual?

A. Yes.

Q. You stated that after the 1902 flood that the A. & V. was at this trestle re-constructed so as to put the base of the structure on the level of the top of the flood. State how that compares with the usual and customary railroad tracks?

A. That is common practice to permit the free flow of the water below the obstructions of the stringers.

Q. Some reference was made to the 1902 flood being an unprecedented flood. Do you remember how it compared with the flood of 1900?

A. I was not on the A. & V. in the 1900 flood.

Q. Had you been on the A. & V. prior to 1900?

A. Yes, as assistant engineer prior to that time, that is in 1898 and 1899.

[fol. 431] Q. But you were not there in the 1900 flood?

A. No.

Q. You were asked if you knew the number of openings that were going to be put in the Jackson & Eastern embankment. I will ask you now, if I tell you that the Jackson & Eastern embankment was going to run solid from the line of the A. & V. embankment for a distance of between one hundred and 200 feet, then have a single opening of approximately 100 feet, and then have a continuous embankment extending northeast for approximately 1,000 feet, whether that would, in your opinion based on your experience with Pearl River have any material effect on the waters of Pearl River?

A. I think it would have a decided effect by diverting the water to the property of the A. & V. and increasing the current through the bridge.

Q. If I tell you that the concrete road in the floods for the past three years had been 18 inches under water, and that twice within the present year the water had been within four inches of its top, what would you say that good railroading demands as to the height

of the elevation of the Jackson & Eastern embankment as compared with the bank of the concrete road?

A. I don't think the bank of the concrete road is anything like adequate for a railroad operating through Pearl River bottom.

Q. Would or would it not be necessary for the bank of the Jackson & Eastern, in order to conform to proper railroading, to be exactly at the elevation of the A. & V. bank at the point of intersection?

[fol. 432] A. It would have to be exactly the same where it intersects.

Q. And some point was made concerning the proximity of the yard board to the sharp curve on the west bank of Pearl River, which is shown on map Exhibit "F". Will you examine the map?

A. This is the sharp curve. (Ind.)

Q. I believe you made some statement concerning east bound trains going around the curve and the bearing the yard board had on it. What bearing does the yard board have on it?

A. No bearing at all, except trains passing should resume the normal speed. They are already in the yard limit and run out at a reduced speed.

Q. Look at the map, Exhibit "F", and after looking at the map tell us if between Farish Bridge and Pearl River there is any curve discernible to the naked eye in the track of the A. & V.?

A. No, it is a tangent track.

Q. Approximately what distance is it, scaling it with the naked eye, from the west side of Farish Bridge to the Pearl River Bridge?

A. I can't find any scale on this line.

Q. Take the Farish Bridge as being 400 feet long?

A. I would say it was somewhere about 2,000 feet or 2,200 feet. I see the figures 2,200 placed there.

Q. The figure you referred to is on the map itself?

A. Yes.

Q. Where is the yard board, look on the map?

A. There is no board on the map.

Q. The yard board is not on there?

A. There is no yard board down here, but I am still of the [fol. 433] opinion that it is not less than three or four hundred feet from the curve.

Q. You were asked numerous question- as to the operations in other localities on your cross. I want to ask you if you know of any other junction point between two railroads which has been located on a curve, on a fill, between two trestles, outside of the yard limits, near a road crossing and in a river bottom subject to overflows?

A. I don't recall any other point of connection with all these features.

Q. Does the combination of these features increase or diminish the objections arising from any individual objection—

Mr. Stone: We object, he has gone over all of that.

The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

A. The combination of these features is worse, of course.

Q. Mr. Woods, I would like to ask you whether in case it was intended that there should simply be an interchange of cars at the proposed point of junction and the Jackson & Eastern was not to use the A. & V.'s line from the point of junction into Jackson, would you or would you not consider the proposed point of junction an objectionable one, if it was simply for the interchange of cars?

A. I would consider it objectionable as a main track connection for the interchange of cars. If in the interchange of cars it should be necessary for the engines of one road to go on the track of the other road.

Q. Now, you were asked numerous questions based on the [fol. 434] hypothesis that the Jackson & Eastern had already located its line out to the westward in Pearl River bottom with reference to whether under those conditions it would be good railroading to turn and go east and come out at Pearsons, and you said more than once that in your opinion that the proper and correct way would be to re-locate the Jackson & Eastern line. I will ask you whether or not this is unusual when dangers and difficulties are found, to re-locate a portion of a proposed new line of railroad?

A. This is very common. There are few lines that are located without having a portion re-located on account of the difficulties that arise.

Q. Do you know of any reason why the Jackson & Eastern proposed line should not be re-located so as to skirt the high ground to the east of Pearl River Valley and connect with A. & V. down in the neighborhood of Pearson?

A. I should think that could be done, while it might not be practical on account of the cost to go clear to Pearson, but they could come to some tangent east of the present proposed location without probably injuring the A. & V. to any extent so far as the high water conditions are concerned.

Q. You were asked if you had been over there in the vicinity of Curran's Crossing to investigate as an engineer the effect of this proposed railroad built on the lines indicated on the map "F" of the Jackson & Eastern track. I will ask you if it is necessary for you, with the information which you already had, to go over and make a special study of it in order to reach a conclusion on that subject?

[fol. 435] A. It is not necessary to go on the ground for the reason I know the general tendency of such a structure in this vicinity, but to get the exact figures it may be necessary to make a survey.

Q. You were asked if it would be necessary for through trains to keep a look out at this proposed junction, if the junction should be established simply as an interchange junction. I wish you would explain to the Court whether it would be possible for an engineer coming to the junction to know whether it was or was not being used as an interchange junction unless he did keep on the look out?

A. No, he couldn't tell that positively without keeping on the lookout.

Q. As a matter of fact, if the line was used only for through trains would the engineer's obligations to keep a lookout be greater or less?

A. It would be greater on trains of high speed if he was going at such a speed that he couldn't stop quickly.

Q. If a high speed train was coming up to the junction, this proposed junction, and the Jackson & Eastern had one of its locomotives within the clearance of the A. & V. main track, in any part of the A. & V. main track described in the condemnation proceedings, what would be the effect on the through train?

A. They would collide.

Q. Have you been past or at this location since 1913, Mr. Wood?

A. Yes, I have been passed there several times a year since then.

By Mr. Stone:

Q. You say that you have been past there several times a year? [fol. 436] A. Yes.

Q. You have simply ridden the trains through there?

A. Yes.

Q. Now, you were asked the question just now——

Mr. Monroe: If the Court please, I didn't bring out anything new and I don't think he is entitled to any re-cross.

The Court: Let's see what he is going to ask him.

Q. You were asked by Mr. Monroe about the necessity of keeping a looking watch with through trains in case the Jackson & Eastern had one of its engines down at this connection. Of course, you answered that with the idea that it was the main line of the A. & V. that the J. & E. engine was running upon?

A. Within the clearance.

Q. The fact is that there is a block signal between Pearson and Jackson?

A. Yes, sir.

Q. And if a switch engine is there trains will not go in on the block signal?

A. If it is set.

Q. You, also, were asked whether or not it was necessary to go back there and look in order to testify, and I understood you to say that it would be necessary to make a survey in order to be accurate?

A. To get the exact estimate of the figures, but it would not be necessary to go back to testify as to the tendency that this structure would have.

Q. And you can't testify to it exactly until you have been there as an engineer and had a survey of the situation, you would have to [fol. 437] make a survey before you could be positive as to your testimony?

A. I couldn't be any more positive on the questions that have been asked me.

Q. How come you to answer counsel then that it would be necessary to go back there and make a survey?

A. I meant to be exact as to such quantities of water that might be diverted and the velocity of it. I can't give an estimate of the increase in velocity, but I know it would be increased.

Q. Increase the velocity by Farish Bridge?

A. Yes.

Q. That would depend upon whether the Jackson & Eastern was built at grade and of the water that passed over the concrete road?

A. It would have a tendency to increase it, that might have something to do with the quantity.

Q. But that would depend on the structure, how high it was built, and the requirements?

A. It would throw more towards Farish Bridge.

Q. Suppose the water on the side of this concrete road in the course of floods is higher than on the other side, towards the Jackson & Eastern, then it would not be the case?

A. Yes, that would still be the case, when the water went over it would go towards Farish Bridge.

Q. If the openings in the Jackson & Eastern were sufficient to take care of the overflow water that went through and over the concrete road, then it would not be the case?

A. You could not get enough openings in there to entirely keep the water from Farish Bridge.

[fol. 438] Q. Suppose the dump has already been built there all the way down from the east end of the concrete road and has been there through the last several flood stages and during these flood stages the water on the side of the concrete road next to the A. & V. was considerably higher than on the side next to the J. & E., then what would you say about it?

A. That the dump was already built?

Q. Suppose the Jackson & Eastern has been constructed west of the concrete road down here, it has been constructed with the length of openings testified about, and was constructed during the last several flood stages, and at these flood stages the water on the side of the concrete road next to the A. & V. line and next to the river was higher than it was on the side next to the Jackson & Eastern, then what would you say?

A. How was that?

Q. Here is the A. & V. Railroad, and there is the River marked out, and here is the direction of the water west of the concrete road. Suppose that the water during these freshets, this embankment is already built, was higher on the north side next to the River and the west side, than it was on the south side, then you wouldn't say the openings were not sufficient to carry it off, would you?

A. I don't see that that would have any bearing on it at all.

Q. Mr. Woods, you were asked the question, if you knew of any other location anywhere exactly like this one, and you said that you couldn't recall another like it. Isn't it a fact, that each and every location has its own particular characteristics?

A. Yes, that's true.

[fol. 439] By Mr. Monroe:

Q. How do other locations compare in their difficulties and dangers with this proposed one?

Mr. Stone: We object.

The Court: I overrule your objections.

A. I don't know of any other place with so many objections as this one has.

Q. I want to ask you one other question. Is there any reason to feel that the flood stage of the water in Pearl River at this location in 1902 will not be repeated?

A. There is no reason.

Mr. Stone: We object to that, it has been gone into before.

The Court: I sustain the objection.

By Mr. Stone:

Q. You spoke of re-locating this right-of-way. Have you been there where those hills are to the east of Pearl River to see what the condition is in that territory?

A. I have not.

(Witness excused.)

[fol. 440]

OFFERS IN EVIDENCE

By Mr. Monroe: We desire to offer in evidence Exhibits G-1, G-2, G-3, G-4, G-5, G-6, and G-8, being photographs which have already been identified.

[fol. 441] By Mr. Monroe: I offer in evidence the blue prints attached to the bill, marked Exhibits "A" and "B."

[fol. 442] By Mr. Monroe: I offer in evidence a certified copy of the proceedings in the condemnation suit sought to be enjoined, entitled the Jackson & Eastern Railway Company versus the Alabama & Vicksburg Railway Company, Canal-Commercial Trust & Savings Bank, etc. addressed to the Circuit Clerk of Rankin County, Mississippi, including the documents attached to said records, all bound together and marked Exhibit "H."

Mr. Neville: That was a different proceeding. There were two condemnation proceedings.

The Court: They have a right to introduce the papers in this proceeding.

Mr. Neville: We have no objections to that, but these are not the papers.

Mr. Monroe: I have offered the record, Number 375.

Mr. Neville: Well, he must have put both proceedings under one number.

The Court: Let me say what I think about it. The Complainant has made application to the Circuit Clerk of Rankin County for a certified copy of the transactions and he has certified to certain papers

to being the record in that case, but if these are not the particular papers of course they should be eliminated, and we will hear evidence on the question as to whether these are or are not the papers, and if they are not, I will eliminate them.

Mr. Neville: We object to that part of the papers introduced consisting of a copy of the summons of the sheriff of Rankin County, dated April 24, 1922, returnable Friday, 19th of May, 1922, also a [fol. 443] letter signed by Neville & Stone, dated May 8, 1922, addressed to the Circuit Clerk of Rankin County, Mississippi, because it appears on the face of the record that these two documents refer to proceedings subsequent to the condemnation proceeding enjoined in this case.

The Court: I will overrule your motion, but some time later you may exclude from the record any paper that is improperly there. I will hear testimony and if the testimony bears you out I will exclude such papers from the record.

Mr. Neville: We except to the ruling of the Court.

The file of papers introduced as Exhibit "H" by the Complainant was then and there so identified by the Stenographer.

[fol. 444] By Mr. Monroe: I offer in evidence, marked Exhibits "K" and "K-1" report of the U. S. Department of Agriculture comparing the record stages of water in the Pearl River, beginning with the year 1901 and closing with June, 1923, together with the letter attached.

The Exhibits so offered were then and there identified by the stenographer.

[fol. 445] By Mr. Monroe: We have had here during the trial of the case, Mr. E. Ford, assistant to the president of the Alabama & Vicksburg Railway Company. He is the man who has charge of the operations of the road as well as the engineering of the road. Mr. Ford was taken violently ill in New Orleans a few days ago and was forbidden by the doctor to come to Meridian, but he came to Meridian nevertheless, but he had a very violent and unpleasant attack in the night last night, the details of which we explained to counsel for opponents. Notwithstanding, he got up and dressed himself this morning to come to Court, but neither Mr. Jones nor myself are willing to take the responsibility of putting him under his present physical condition on the witness stand. Therefore, we are going to close our case at this stage of it without Mr. Ford's testimony.

But here we want to make this statement, to be understood, we want to make a request that in lieu of that fact that Mr. Ford is not in the Courtroom that Mr. Woods be allowed to stay in the room as an engineer on our behalf. We presume you will have no objections, we accorded to you the same privilege.

By Mr. Stone: Counsel for the defendant, the Jackson & Eastern Railway Company, understands that Mr. Ford is in Meridian in his private car, and they are perfectly willing to accompany the Court

to his private car and take his testimony if counsel for the Alabama & Vicksburg Railway Company so desire. We are perfectly willing to do anything we can do in order for them to get the testimony of Mr. Ford, if they so desire.

[fol. 446] By Mr. Monroe: We appreciate very greatly the courtesy offered by counsel for the defendant, but to be entirely frank with the Court both Mr. Jones and myself feel that it would actually endanger Mr. Ford's health to put him under the strain of putting him on the witness stand, and neither Mr. Jones nor myself would be willing to take the responsibility.

Complainant rests.

[fol. 447] L. W. DUFFEE, having been called and duly sworn, testified as follows for and on behalf of the defendant, to-wit:

Direct examination by Mr. Stone, for the defendant:

Q. Mr. Duffee, what is your name, present place of residence and occupation?

A. L. W. Duffee, residence, Laurel, Mississippi, occupation, civil engineer.

Q. For whom and with whom are you now working?

A. For myself, general practice.

Q. How long have you been a civil engineer, a railroad civil engineer?

Mr. Monroe: We object, he has not said that he was a railroad civil engineer.

Q. Are you or not a railroad civil engineer?

A. Yes, sir.

Q. How long have you been a railroad civil engineer?

A. Well, I suppose you could say from the time I graduated, the first experience I had was in railroad work, 19 years.

Q. State to the Court whether or not you are a graduate of any school in civil engineering?

A. I am.

Q. Of what school?

A. At Auburn, Alabama.

Q. What year did you graduate?

A. 1904.

Q. Will you please state to the Court where you worked, and with what companies as a civil engineer?

[fol. 448] A. Railroad work you mean?

Q. Yes?

A. I worked with the L. & N., the Bay Minette, the Fort Morgan Railroad.

Q. Could you give us the number of years on each one of those?

A. With the M. & M. Railroad Company about two years, that is now known as the G. M. & N., then I worked for the G. M. & N., but under a different name.

Q. How long?

A. About 12 years.

Q. You are in business now?

A. I worked for the Jackson & Eastern practically one year.

Q. How long have you been in business for yourself as an engineer?

A. A little over 21½ years.

Q. And your location is Laurel, Mississippi?

A. Yes, sir.

Q. Mr. Duffee, during these years of experience state to the Court whether or not you have assisted in the construction of any railroad, the location and construction of any railroad?

A. I have both.

Q. Of which roads?

A. I assisted in the location and construction of all the roads that I mentioned. I have been in charge of the construction and location of the G. M. & N., the M. & M. and the Jackson & Eastern, parts of them.

Q. What is your age, Mr. Duffee?

A. I will be 39 in November.

[fol. 449] Q. In November?

A. Yes, Sir.

Q. Mr. Duffee, state to the Court, what, if anything, you had to do with the location of the proposed connection of the Jackson & Eastern with the Alabama & Vicksburg Railroad? What I want to know is, were you the engineer in charge?

A. Yes, sir.

Q. Who was the engineer out there working when this location was selected?

A. Why, I was.

Q. Are you familiar with the Jackson & Eastern line of road from Sebastopol to the junction at the A. & V.

A. Yes, sir.

Q. You are generally familiar with that part of it, and very familiar with the part near Jackson?

A. Yes, sir. I would say from 12 to 15 miles out.

Q. State whether or not you are familiar with the general lay of the land at the proposed junction and along the Jackson & Eastern right of way back north and east?

A. I am.

Q. For how far?

A. From 12 to 15 miles.

Q. Mr. Duffee, state to His Honor what, if anything, the railroad engineer has to do with water problems?

A. The natural drainage you mean?

Q. Yes?

A. This is one of the most important elements that we have to [fol 450] consider in locating a road.

Q. Then do I understand that that is one of the elements of engineering, that the civil engineer has to look after?

A. Absolutely.

Q. I will ask you whether or not you are familiar with the land lying north of the Alabama & Vicksburg Railroad between the present proposed line of the Jackson & Eastern and the A. & V.? Between the present proposed line of the Jackson & Eastern and the River I mean?

A. I am.

Q. Have you been over that?

A. Yes, sir.

Q. Do you know where this proposed junction is to be made?

A. Yes, sir.

Q. As an engineer and one who is familiar with the surrounding country there, please state to the Court the most feasible point of junction for the Jackson & Eastern with the A. & V. for an interchange track, taking into consideration the interest of the Jackson & Eastern Railroad and the interest of the Alabama & Vicksburg Railroad, the operators of the Alabama & Vicksburg and the operators of the Jackson & Eastern Railroad, and the general traveling public?

Mr. Monroe: I want to object to the testimony of this witness on operating until he qualifies as an expert. He has had absolutely no operating experience and has not testified that he has had a single day's operating experience.

The Court: I understand that is part of a civil engineer's education.

[fol 451]

By Mr. Monroe:

Q. Have you ever been in operating charge of any railroad or any portion of a railroad?

A. As chief engineer I had charge of the entire construction of the M. & M., and had charge of certain work trains.

Q. Do you know what is meant by having charge of the operations of a railroad?

A. Yes.

Q. Do you consider that having charge of a work train is having charge of the operations of a railroad?

A. Not the entire operations.

Q. And the experience you have in operations is having had charge of work trains on what road?

A. The G. M. & N. and the M. & M. and with close association with the managers and operating officials my advice was often consulted.

Mr. Monroe: We object to his testifying as to the operations.

The Court: I overrule your objections.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Answer the question.

A. Considering all the elements that you mentioned the point at which the connection is sought to be made is my answer to that.

Q. Mr. Duffee, I want you to state to the Court what observation you have and what experience you have had in connection with this particular junction, you say that you came to the conclusion that [fol. 452] this was the place for the junction, what opportunities have you had to judge it?

A. Let me understand you?

A. To look the situation over and know why this is the proper place for a junction?

A. First I had the map of the whole country there. To be exact I had the United States geological survey, showing the city of Jackson, the meanderings of Pearl River, and I noted the lines of the road, the swamp lands, the level lands, the hill lands the operations of the A. & V. Railroad and other railroads in and out of Jackson and the proposed general route in which the Jackson & Eastern was to go and from that map—the first thing in the location to be considered is to get straight lines between two points, at the point selected the A. & V. Railroad after running in an almost westerly direction makes a decided bend to the southeast running in a direction almost at right angles from the general direction in which the proposed Jackson & Eastern is to be built, and to that point where the A. & V. makes its bend was the logical place to go, that was the first consideration. The next was the lay of the land with the bends of the river, and by the same map we studied that and then I made a survey of the situation, and knowing the conditions of the A. & V. itself, the location of its trestles, its signales and its curvature, and other elements like that.

Q. Explain to the Court what you mean by making a survey?

A. An instrument survey, that is just the customary way, surveyed that location with the instruments I had.

Q. What did you do?

A. We run a line, curves and angles and set that out, measured [fol. 453] off the bends of the River, and the road was located with instruments, angles and with measurements, located the houses and buildings along the road, et cetera, then we would go over the map again and run it again and study it closer and kept that up until finally we got these final lines or what we call the location.

Q. So I understand that you made the usual instrument survey?

A. Some of it was shown on the map.

Q. But you did go on the ground yourself with your instruments?

A. Yes, sir.

Q. What else did you do?

A. With that in view, we found that we could run a line, connecting with the A. & V. and by a process of study, measurements and survey, we picked the point on the A. & V. which we considered would cause the least inconvenience to the A. & V. itself, and with the least cost from the Jackson & Eastern standpoint, and the least inconvenience to the public roads and private buildings which happened to be there, then we fixed that location and started our railroad.

Q. I will ask you to state to the Court whether or not in making

this location for the junction you took into consideration the operating problems of the A. & V. Railroad?

Mr. Monroe: We make the same objection here, he has not qualified as an operating man.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. I did.

[fol. 454] Q. I will ask you to state to the Court whether or not you took into consideration the dangers that might come to the employees of the A. & V. as well as the Jackson & Eastern in the operation of the trains?

A. Yes, sir.

Q. I will ask you to state to the Court whether or not you took into consideration the question of delays that would be caused by a junction at that point?

A. Yes, sir.

Q. Did you state that you made a map?

A. I did.

Q. I will ask you to look at the map which I show you and ask you to state if that is the map which you made?

Mr. Monroe: Let me see that please.

Witness: Yes, sir, I made that map.

Q. Mr. Duffee, I will ask you to state whether or not you took into consideration the water problems that might arise?

A. Yes, sir, I gave that a close study.

Q. Then, after you took into consideration all of these problems where did you locate the junction?

A. I located the junction just as near the point of the curve of the A. & V. as I could get to it.

Q. You were there yesterday when we went over the place?

A. Yes, sir.

Q. Is that or not the point you selected?

A. It is.

Q. Mr. Duffee, will you go back to the question of the water [fol. 455] problem. It is charged in the complainant's bill that the construction of the Jackson & Eastern, that the junction of the Jackson & Eastern with the A. & V. at the point selected by you will result in turning the water into the main current of the river and endanger the A. & V. Railroad Company's bridge and tracks. Have you or not studied that question?

A. I have studied it.

Q. State to His Honor whether or not you studied that question before you laid the line, finally determined it?

A. I did.

Q. State to His Honor whether or not you have studied it since this proceeding originated?

A. I have.

Q. State whether or not in studying that you used your skill as a civil engineer?

A. I did.

Q. Please state to His Honor whether or not the junction of the Jackson & Eastern Railroad with the Alabama & Vicksburg Railroad at the point proposed will in your judgment turn the water and increase the water in the main current of the river so as to endanger the bridge or any part of the road bed of the A. & V. Railroad?

A. It is my opinion that the construction according to the plan I made will not appreciable change any water conditions existing then and now.

Q. I will ask you to state to the Court whether or not you have had any opportunity to study and know the high water conditions? [fol. 456] A. I did. I was there on the ground when the highest water was there, and I have been there since.

Q. Will you give the date?

A. 1921.

Q. You have been there since?

A. Yes, sir.

Q. During the high water?

A. No, sir.

Q. Not during the high water?

A. No, sir.

Q. I will ask you to state whether or not you had any opportunity to study it during the period of low water stages?

A. Yes, sir, but it was not so extremely low.

Q. Will you tell the Court why, in your judgment, the junction of the Jackson & Eastern with the Alabama & Vicksburg at the point proposed will not make any appreciable increase of the flow of water toward the main channel of the river?

A. Because, your Honor, the flood conditions that existed before and after this survey were controlled primarily by the public highway that goes somewhat parallel with the A. & V. Railroad. In other words, if the water from the river overflows and backs up there and gets higher on the river side than it was on the opposite side of the concrete highway it was caused by the road itself.

Q. How much higher was it on the river side than on the opposite side?

A. From one foot to a foot and a half, 18 inches, there east of this road crossing, and in the construction, the plan of construction [fol. 457] of the Jackson & Eastern leaves ample allowance for openings. There are vastly more openings in the Jackson & Eastern than in the public highway and the construction of the Jackson & Eastern could not effect the conditions there.

Q. Why?

A. Because it would take the water off faster than it could go through the highway.

Q. Suppose, Mr. Duffee, that the water should rise and flow over this concrete highway, please state to his Honor if there are sufficient openings in the Jackson & Eastern embankment to permit the water to pass through?

Mr. Monroe: We object to that.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. It is my firm belief that there is.

Q. State whether or not that belief of yours is predicated upon your experience as a civil engineer?

A. It is.

Mr. Monroe: We object to the question and answer, he has not given what the openings are, and he is certainly just giving his opinion.

The Court: As a civil engineer I think he can answer the question.

Mr. Monroe: We except to the ruling of the Court.

Q. Mr. Duffee, will you begin at the point of junction and state the openings that are left in the Jackson & Eastern embankment until you reach the crossing of the concrete road?

A. There are three openings, three trestle openings, the first one [fol. 458] is 100 feet, the second 200 feet and the third is 10 feet.

Q. That makes a total of how much of openings?

A. 310 feet.

Q. Over that same territory of distance state to his Honor what openings are left in the concrete road?

A. There are two openings, one of eight feet and one 24 feet, total of 32 feet.

Q. Not counting the opening of the Farish bridge?

A. No.

Q. Then the total openings not including the Farish bridge is how much?

A. 32 feet.

Q. Against the openings in your railroad of how many feet?

A. 310 feet.

Mr. Monroe: We object to the comparison as they have plainly stated that they have excluded the Farish bridge.

Q. State whether or not the Farish bridge is east or west of the junction?

A. The Farish bridge is west. And in answering your question I was asked to state the opening from the point of junction of the Jackson & Eastern out to where it crosses the concrete road and that is what I understood that I was answering.

Q. Now, trace the waters further and state whether it goes over the Farish bridge or under it.

A. It goes through the Farish bridge, the concrete bridge of the highway and goes under there to the A. & V. trestle and backs out in the low lands on the other side of the railroad.

[fol. 459] Q. Which side of the A. & V.?

A. South.

Q. State whether or not the water that passes through the Farish bridge and goes to the A. & V. ever reaches the Jackson & Eastern?

A. It never comes near the Jackson & Eastern.

Q. What other road is in there, if any, that is built up there?

A. Highway you mean?

Q. Yes.

A. There is a road leading south what is called Curran's Crossing on the Dixie Highway. That road crossing is just west of the proposed junction of the railroad, between it and the Farish bridge.

Q. Have you any more?

A. I have the total number of openings in the concrete highway which is 32 feet.

Q. Against how many in the same territory of the railroad?

A. 310 feet.

Q. In leaving these openings in the Jackson & Eastern right of way what controlled you as to the fitness and led you to the particular place where you left them?

A. I determined them by levels which were revealed from the instruments, and being on the ground I observed where the currents, where the natural currents were, and placed the openings at these points.

Q. State to the Court whether or not these points at which you left these openings are placed where they really will take care — current [fol. 460] rent waters, overflowed or going through the concrete highway?

Mr. Monroe: We object, as the question is very leading.

The Court: You know the rule as to leading questions.

Q. State where these openings are with reference to the current?

A. They are placed where the natural currents carried the water, over the least obstructions.

Q. How did you determine the place of the openings?

A. By observations from the levels when it was dry.

Q. Levels?

A. Instrument, levels.

Q. Do I understand that you put instruments on the ground?

A. Yes, sir, on points along the line.

Q. How did you do that?

A. Well, I formed my opinion by personal observation of the high water there, from observation when it was at its extreme height.

Q. There is an allegation in the bill that this junction of the Jackson & Eastern with the Alabama & Vicksburg cause the water to be impounded between the Jackson & Eastern and the Alabama & Vicksburg as to endanger the A. & V. road bed, the embankments and tracks at that point, what have you to say as to that?

A. I can't conceive of any such conditions.

Q. State to his Honor if you made observations there that would enable you to ascertain the conditions there, and if so, what they were.

[fol. 461] A. I have made observations there and know that there is no probability or possibility of the water being impounded between the tracks so as to endanger the road. There is no more water that

goes between these tracks. There is nothing to obstruct the open flow all the time.

Q. Which way does the water flow with reference to the A. & V. right of way?

A. Westerly or in a southwesterly direction.

Q. Have you ever made any observations while the water was up to know which way it went?

A. That water?

Q. Yes?

A. It was not impounded.

Q. Which way was the water making for?

A. In a southwesterly direction. There was high water and it was hard to tell as there was no special current. It was just a sea of water with no special current in it.

Q. Mr. Duffee, has any of that embankment been thrown up between the A. & V. and the concrete road?

A. Most of it.

Q. How much more is to be thrown up?

A. The part on the A. & V. right of way, which is located on its right of way line and a little part down right down on the concrete road.

Q. After that dump was thrown up state to His Honor if you saw the high water there then or not?

A. No, sir.

[fol. 462] Q. Were you there during the high water time?

A. No, sir.

Q. After no part of it was built?

A. No, sir.

Q. What time was this dump built, Mr. Duffee?

A. I can't answer that exactly, I was not in charge of it.

Q. You were not in charge of the building of it?

A. I can't say when it was built, only as I understand, I have no personal knowledge of it, but it was after 1921 though.

Q. Mr. Duffee, take the road leading north from the dirt road, the Fannin Road, also the railroad leaving north after it crosses the concrete road, do you know about the number of openings left in the gravel road?

A. Yes, sir, I measured them at the time we surveyed the railroad.

Q. Why did you measure them?

A. As part of the evidence to be used in determining the number of openings to put in the railroad.

Q. At the time you surveyed that, state whether you had any observation of the high water, while you surveyed that part to ascertain the number of openings necessary to put in the railroad?

A. Yes, sir, I worked all through it during the highest water.

Q. State to his Honor whether the construction of that road back over there with the Fannin Road will convert the water so as — back it up against the A. & V. bridge at the river crossing?

A. It will not change the conditions.

Q. State whether or not you have provided sufficient openings to [fol. 463] carry the water off?

A. I have.

Q. Will you state to His Honor what openings you have provided along up there, as far as you have gone up there?

A. We have first an opening of 100 feet, that is a trestle which is north of the concrete road, the trestle is 100 feet long.

Q. How far north?

A. Several hundred feet as I recall, I don't remember the exact distance.

Q. Well, now, breaking in on you a little bit, how are you going to cross the concrete road out there?

A. At grade.

Q. What do you mean by at grade?

A. At the same elevation, or when I say at grade I mean the same elevation as the road is.

Q. This is elevated?

A. This would be at the same elevation as the concrete road.

Q. If any water would run over the concrete road at that point, state whether or not it would also run over the railroad?

A. At that particular point it would.

Q. All right, you mentioned one opening. How many hundred feet did you say that was from the concrete road?

A. Several hundred feet, a short distance.

Q. And what is the length of the opening?

A. 100 feet.

Q. All right?

A. The next one we have is at a depression, a natural depression [fol. 464] 42 feet and the next one is 53 feet.

Q. Do you remember how far apart they are?

A. Not exactly, but I think these three are within a mile though.

Q. Within a mile?

A. Yes, sir.

Q. How come you to select these three places?

A. Because they were natural depressions in the ground, the natural water course during high water.

Q. All right, how far is it from the A. & V. Railroad, at the proposed junction, where your road crosses the concrete road?

A. Something like $\frac{3}{4}$ of a mile. I wouldn't say positively, I don't remember exactly, but something like that.

Q. Then you have given the openings about a mile north?

A. Yes, sir.

Q. State to His Honor whether in your judgment and experience as a civil engineer and from your observation of the land there, also from your observation of the behavior of the River during high water, you left sufficient openings to take care of the water?

A. I have.

Q. You said awhile ago that you worked there in the high water, how did you get through there?

A. Well, I waded part of the time. And went in a boat.

Q. How long were you there during the high water in 1921?

A. I was there off and on during the entire flood stage, it lasted two or three weeks.

Q. Were you there until the water receded?

[fol. 465] A. Yes, sir.

Q. Mr. Duffee, what is the distance between the Fannin Road and the Jackson & Eastern as it runs north over this territory that you mentioned?

A. Why it runs on an average of five or six hundred feet.

Q. What is the average distance of the Jackson & Eastern Railroad from the concrete road?

A. It will average probably a little more than that.

Q. How far is it from the Fannin Road to the River?

A. That varies from about a quarter of a mile up to a mile and half.

Q. Now, when you selected the place for the building of this Jackson & Eastern dump, road bed, state to His Honor whether or not that is on the highest ground, or whether there is still higher ground between that and the river?

A. Do I understand you to say in the construction of the J. & E.

Q. Yes?

A. No, the Jackson & Eastern is on the highest ground convenient to the road, and runs practically on the highest elevation it is the natural elevation.

Q. I will ask you whether east on the A. & V. state whether or not that is lower or higher?

A. It is lower adjacent to the railroad.

Q. Well, when the water comes through the Jackson & Eastern openings, and the water begins to recede state to His Honor whether there is any danger then of its going back and effecting the A. & V. right of way?

A. There is no danger.

[fol. 466] Q. There has been some testimony introduced that the construction of your railroad would force the water in against the Farish Bridge and the concrete bridge along the concrete highway, state to His Honor whether in your opinion the construction of the Jackson & Eastern Railroad will increase the flow of water against this concrete bridge?

A. It will not.

Q. State whether or not in your opinion it will increase the flow against the railroad trestle, the railroad bridge?

A. It will not.

Q. Or any of their embankment?

A. It will not.

Q. Mr. Duffee, you say it will not, I want to know what you base that opinion on, whether you have gone there and looked at it since this law suit was brought, whether a survey was made of it, whether you have studied the geological map, or whether all of it?

A. I will answer that question in this way, I observed the pressure of the water against the concrete bridge and the railroad bridge before a cubic foot of earth was moved in the construction of this railroad, and my plan of the Jackson & Eastern will not affect the condition there one way or the other.

Q. Mr. Duffee, did you observe the concrete bridge when you went down there the other day?

A. Yes, sir.

Q. That is the same bridge that was there when you were there in 1921?

A. So far as I could tell it is.

Q. This dump of the Jackson & Eastern was constructed in the [fol. 467] spring of 1922 and was there during the high water of 1923, state whether you saw any damage done to the concrete bridge or the company's dump, the company's trestle or bridge?

A. I didn't see any damage done.

Q. Mr. Duffee, you say that you were the engineer when the M. & M. was built?

A. Yes, sir.

Q. And had charge of that construction as an engineer?

A. Yes.

Q. Did you have any water courses there to take care of?

A. Yes, sir.

Q. What were they?

Mr. Monroe: We object to that as being irrelevant.

The Court: I overrule your objections.

Mr. Monroe: We except to the ruling of the Court.

A. We crossed Siawashee Creek two times, a stream of considerable proportions, then Okatibbee Creek, Tallahatta Creek, Tallashua Creek, and further over in Newton County the head waters of the Chunky Creek, near Union. I mention these larger streams, and there were a lot of smaller ones.

Q. Mr. Duffee, there is an allegation in the bill that this junction here will interfere with the drainage between these two constructions, giving rise to very serious drainage problems, that is, between these two constructions there?

A. I will say that it won't.

Q. I will ask you to state to the Court what effect, if any, the construction of your railroad there will have towards impounding the [fol. 468] water up against the A. & V. at the point of junction?

A. It will not change it.

Q. State to the Court where the highest ground is, next to the railroad or further east?

A. It is higher near the junction.

Q. And lower further east?

A. Yes, sir.

Q. Mr. Duffee, as an engineer, a civil engineer, I want to get your opinion about this junction there being on a curve. It is alleged in the bill that because of the fact that this junction is proposed to be made on a curve, the outside of a curve, that it is very dangerous. Have you had any experience along that line?

A. Yes, sir.

Q. What have you to say to that?

A. I say that that is a very minor objection in all railroad constructions of this sort. We aim for the ideal always, but we have to accept something short of it, we have no switching conditions that are ideal, but it is foolish to say we can't switch on a curve. Every

railroad has them, the A. & V. I don't know one that has not. It is an objection, but not a serious one.

Q. I will ask you whether or not first class railroads build junctions on curves?

Mr. Monroe: We object to that, as to what railroads do.

The Court: I will let him answer.

Mr. Monroe: We except to the ruling of the Court.

A. They do it in cases like this, where there is hardly any way to avoid it.

Q. It has been suggested, Mr. Duffee, in the bill that the junction [fol. 469] be made at Pearson. Are you or not familiar enough with the entire survey and lay of the land and the direction of the Jackson & Eastern to testify as to the feasibility of that?

A. I am familiar with the general lay of the land, and the distance from this proposed junction to Pearson.

Q. What was the objection, if any, to making the junction at Pearson, and going back there some four miles, instead of making it at this proposed point of junction?

A. Because we were going to Jackson and not to Pearson.

Mr. Monroe: We object, they have said that they were not going to Jackson.

A. Towards Jackson, I will say then.

Q. How far is Pearson then from the point of junction, say back east?

A. It is five or six miles, about that.

Q. State to His Honor whether good railroading would lead you as an engineer to form a junction at Pearson when the ultimate termination of the road on the west is Jackson?

A. I wouldn't think of it.

Mr. Monroe: We make the same objection.

Q. Why?

A. Because for the same reason as I mentioned, it is not the direction that we are going, it is not the direction we are going, and if we were going in that direction we would have to cross tremendous hills, and it would be expensive construction.

Q. Do you know where these hills are?

A. North of Pearson. The A. & V. Railroad, I might add at this point, if it had not been for those hills would have gone straighter [fol. 470] there.

Q. Does your map show these hills?

A. I don't think so, I can't say.

Q. Does your map show Pearson?

A. It does, it shows the location of Pearson. It was taken from another map which I supposed to be correct. These hills lie in this area in here. (Ind.)

Q. Now, will you have the stenographer mark this map Exhibit "A" to your testimony?

A. I will do so.

The map that was being testified to was here handed to the stenographer and was then and there identified as Exhibit "A" to the testimony of L. W. Duffee.

[fol. 471] Mr. Monroe: Will you mark that with a red pencil, the location of these hills that you had reference to?

A. Yes, sir. These branches run through them, and extend in the general way like this (Ind.). Brandon is on one of the ridges.

By Mr. Stone:

Q. Now, then, mark the Jackson & Eastern Railroad at the point of junction?

A. The mark has been put on there once. It is marked "JCT."

Q. I will ask you to mark the Jackson & Eastern line as "X"?

A. All right.

Q. I will ask you to mark the A. & V. with a "Y"?

A. All right.

Q. How have you identified the hills, with what kind of mark?

A. With a little red mark, irregular.

Q. They lie in between the two railroads?

A. Yes, sir.

Q. I will ask you to show me Brandon on this map?

A. It is right here, marked. (Ind.)

Q. State to His Honor whether or not the railroad runs straight through Brandon or whether it makes a deep curve?

A. It made a decided bend.

Q. State whether or not it bends around these hills?

A. It does.

Mr. Stone: We desire now, to introduce the map.

The Court: That is all right, it has been identified.

[fol. 472] Q. Well, could you go through these hills, Mr. Duffee, without great expense?

A. We would have to go through them or go around them, and in going around the hills we would have to put in a good deal of curvature in approaching the A. & V. and run parallel with the A. & V. directly opposite of the way we want to go.

Q. Run parallel with the A. & V. going in what direction?

A. In a southeasterly direction.

Q. When the point of direction to the destination or terminus?

A. Is southwest.

Q. I will ask you to state whether or not that would be good railroading?

A. It would not, I wouldn't consider it.

Q. When you got to Pearson would you then be on a curve?

A. On a curve of the A. & V.

Q. Are you familiar with that?

A. I recall that there is a curve in the A. & V. at Pearson.

Q. Then so far as the curve is concerned would that connection be better or worse?

A. Certainly no better.

Q. Do you know whether or not there is a switch there at Pearson

A. Yes, sir.

Q. On which side of the A. & V.?

A. On the outside.

Q. Is that on the south or north side?

A. South side.

Q. And you would approach the A. & V. at Pearson from which side?

[fol. 473] A. North.

Q. Well, how close would you have to get to the A. & V. parallel the A. & V. to miss those hills?

A. The two lines would converge, but the natural distance would be variable. It would be over three or four miles out to keep a straight line, we would intend to locate a straight line.

Q. You would be turning out of the water area?

A. We would still be in the water area a good part of the way.

Q. What would become of the dump that has already been built there?

A. That would have to be wasted.

Q. State to His Honor whether or not that would be any greater expense?

A. Vastly more expensive.

Q. What about the expense from an operating standpoint?

A. It would be continually more expensive.

Q. Why?

A. Because it would be a longer distance and we would have a greater curvature and more and heavier grades to overcome.

Q. When you got your train up this way state whether or not it would be headed towards Jackson or away from Jackson?

A. It would be headed away from Jackson.

Q. How would you manage to get back to Jackson?

A. There would be extra switching there.

Q. State whether or not you could get back without turning your engine around?

A. We would have to turn the engine around.

[fol. 474] Mr. Monroe: We object to any testimony about the train going to Jackson.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. State whether or not that would be good railroading in your judgment.

A. That would be poor railroading.

Q. Mr. Duffee, they have charged in the bill that this point of junction is on a dump, and because of the fact that it is on a dump it is exceedingly dangerous. State whether from your experience as a railroad civil engineer, your experience has been such as to enable you to judge of that fact?

A. My experience has been such as to enable me to judge.

Mr. Monroe: Better qualify him a little.

Mr. Stone:

Q. From your observation and experience as an engineer and in the operating department, from your observation and experience, state what danger there is?

Mr. Monroe: We object, if the Court please, he has not shown that he has had any operating experience except with some work trains.

By Mr. Stone:

Q. Mr. Duffee, I will ask you whether or not in qualifying as a civil engineer in the railroad business you are required to familiarize yourself and become acquainted with the operation of trains?

Mr. Monroe: Don't you think that is leading?

The Court: I sustain the objection as to its being a leading question.

[fol. 475] Q. State what is required of you as a civil engineer?

A. We are required to closely observe the movements of trains, because we plan the construction and must necessarily know how they are to be used, and from my constant association with the general manager and superintendent and train master, we have gone over these problems and discussed them, and the fact that I have never given the trainmen their orders I don't consider shuts me off from knowing how it should be done.

Q. State to what extent you were required to familiarize yourself with the operations of trains?

A. Because we had to do it.

Q. To what extent, if any, were you required to familiarize yourself?

A. I had to familiarize myself with the operating rules, the standard rules used by practically every American railroad.

Q. I will ask you what you have to say with reference to dangers in connection with this junction?

Mr. Monroe: We object.

A. I wouldn't consider it being on a dump as being at all unduly dangerous element.

Q. Take this interchange switch, a great deal has been said in this cause about the running of trains and switches, et cetera along this point of junction. I will ask you to state to the Court what effect will this switch have upon trains passing there and not stopping at the switch at all?

A. No effect at all.

Q. State whether or not it will change the elevation of the A. & [fol. 476] V. track in any shape or form?

A. It will not.

Q. State whether or not either rail will be changed of the A. & V.?

A. It will not.

Q. How will it be built?

A. The connection will be made so as to lay the rails of the Jackson & Eastern—you will have the Jackson & Eastern track conform to the existing elevation.

Q. Then there will be no change in the track of the A. & V.?

A. No, sir.

Q. Well, what danger would there be in switching cars on and over the connection thus built, if any?

A. No dangers, it would be like any other switch connection.

Q. What is there anyhow about a dump which makes it dangerous?

A. There is nothing more about a dump except in cases where you get on and off trains, it makes it further down on the level ground, it makes no difference at all in the construction of the track, that element is not considered more dangerous.

Q. Take a dump of that size, do trains run faster or slower because it is a dump?

A. They do not.

Q. Who built the dump of the M. & M. into Meridian, that elevation?

A. I look after it, I was the engineer in charge of it.

Q. Mr. Duffee, there has been considerable complaint made in the bill about this junction being near Curran's Crossing, and be- [fol. 477] cause of that fact it is more dangerous. I want you to state to the Court what you think about the danger of the connection being near Curran's Crossing?

A. I really think there would be less danger.

Q. Why?

A. If the connection was put there, when the trains would stop there to do the work, to interchange the cars, there would not be any excessive speed as they approached the crossing. The trains that don't stop it won't effect them one way or the other, it will be just like it is now.

Q. What is the danger that comes from a crossing? What causes the danger?

A. Mostly in the case of fast trains that can't stop when they find it necessary, when they find an automobile or vehicle on the track.

Q. What occasion, if any would the trains with no switching to do there, have to stop at this switch?

A. If they had no switching to do there is no occasion for them to stop there.

Q. There is an allegation in the bill that this switch connection will interfere with the block signal of the A. & V.

A. There is no reason why it will interfere with the block signal. The same conditions have existed elsewhere and have been remedied in a very simple manner.

Q. Mr. Duffee, are you familiar with register station, a place to register trains?

A. Yes, sir.

[fol. 478] Q. And when they are required?

A. Yes, sir.

Q. Well, would or would not a register be required here for this simple interchange switch track?

Mr. Monroe: We object. That shows to what extreme these people will go. They are undertaking now to get expert testimony from this witness as to register boxes.

By Mr. Stone:

Q. From your experience as an engineer, state what occasions you have had to observe when and on what occasion they are used?

A. Register boxes?

Q. Yes?

A. Register booths are put in in cases where one railroad has a junction point with its own railroad, where a branch line runs over the same track, where they come together at that point is a register box, usually a register box.

Q. How about a case where there is nothing but a switch for the purpose of interchanging cars?

A. I see no necessity for one, and don't know of a single case where they have them.

Q. Mr. Duffee, taking into consideration the curve in the track of the Alabama & Vicksburg Railroad, and taking into consideration the dump, and taking into consideration Curran's Crossing, combine them all, and state to the Court what objections that you see, as a civil engineer, to making this junction at this point?

A. No objections worth considering seriously.

[fol. 479] Q. It is alleged in the bill that to the west and also to the east of this junction there is a trestle, do you know where the trestles are?

A. On the A. & V.?

Q. Yes?

A. Yes, sir.

Q. What have you to say as to these trestles as objections to this junction?

A. They are not serious objections, no objections that would keep them from stopping and doing switching there.

Q. All right, do you know of a trestle in a switch yard of any first-class railroad, in the yard or at any other point where they do switching?

A. Yes.

Q. In the City of Meridian?

A. Yes, sir.

Q. State whether or not they switch over them?

A. They do.

Q. Well, how would a car be uncoupled if it happened to be on this trestle, if the trestle was where it happened to stop and you were going to cut the car off?

A. Have the engine come clear of the trestle and then cut it off.

Q. How about backing it?

A. It would be the same if it was the nearest there.

Q. What difficulty would there be, if any, in stopping the engine that was to be taken out before it got on the trestle?

A. That is what the train crew would do if they figured on the time.

[fol. 480] Q. You say that is what the train crew would do. Do you know from observation what they would do?

A. Yes, sir.

Q. And you state that from your observation?

A. From my observation and knowledge of the rules.

Q. State to His Honor whether or not that is good railroading?

Mr. Monroe: We object to this line of testimony, he has never qualified that he was a member of any crew.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

The Court: I told you what I thought about that. I think his testimony ought to be allowed to go in, although it might not have much probative value.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Something has been said in the bill and something in the testimony about the signals being given in this curve to the engineer or persons on the engine. What difficulties do you see, if any, to signalling the engineer in this curve by the operators of the train?

A. No difficulty.

Q. How is it done?

A. It is done by—

Q. If the train is headed for instance west?

A. If the train is headed west the engineer would be on the outside of the curve and naturally couldn't see around the curve, so his fireman would get the signal.

[fol. 481] Q. Do you know the rule about the fireman giving signals?

A. Yes, sir, this is the rule book.

Q. Read Rule 443 to the Court?

A. This is headed engine men.

Q. Engine men is that engineers?

A. Yes, sir.

Q. Well, read it?

A. 443:—They must keep constantly and vigilantly on the lookout while running, for obstructions, defects of the track and signals, and must frequently look back, especially while around curves, to see whether they have the whole train and it is all right.

Q. Let me see the book again?

A. (Witness hands book to counsel.)

Q. I will ask you now to read the rule book, rule 498?

A. That is the duties of firemen, rule 498.

Q. Will you read it please?

A. They must assist the engine men in oiling and repairing the engine when required, in keeping a look out for signals, obstructions

and defects of the track and of their trains, and must take charge of the engine during his absence.

Q. What are you reading that from?

Mr. Monroe: It is admitted that the witness is reading from a rule book furnished counsel for the Jackson & Eastern by the President of the A. & V. Railroad, same being the A. & V. Railroad's rule book.

[fol. 482] Q. In coming up to this supposed crossing, a train going west, how would the signals be given when switching cars?

A. The train going west?

Q. Yes?

A. One of the brakemen on the train will probably get on the car that he wants to cut out, the engineman would be looking back for signals, and the brakeman when he got clear of the trestle at the point he wanted to uncouple the car would signal the engine man to stop.

Q. This being on a curve and going west, state whether or not the engineer could see the signals from the man standing on the top of the train?

A. If he couldn't another brakeman on the side would transmit them.

Q. State whether or not on these freight trains there is more than one brakeman?

A. They are supposed to have three.

Q. Where do they ride?

A. They have one placed right on the engine, one on the caboose and one in the train somewhere else.

Q. What is the one on the engine called?

A. The head brakeman.

Q. What is to hinder him receiving the signals?

A. The same duties apply to him as to the fireman relative to signals.

Q. Have you looked up the rule for him?

A. I don't remember that particular rule.

[fol. 483] Q. You haven't time to look it up now.

A. All right.

Q. Take a train coming back this way, coming east, what difficulties would you see in the switching of trains at this point?

A. It would be practically the same operations as I have just stated, consist of giving the signal to stop the train clear of the trestle at that particular point.

Q. Suppose the train should stop on the trestle?

A. Then it would be necessary to go back and uncouple the cars on the trestle.

Q. How would that be provided for?

A. By putting a walk way along side of the trestle for the brakeman to walk on.

Q. State to His Honor if it is customarily done?

A. It is.

Q. Is there any expense attached to it? If so, how much?

A. There is some expense, but not prohibitive.

Q. What do you mean by that?

A. There is no great expense.

Q. What would the walk consist of?

A. It would be along the cross ties, a board walk. It would be about three feet wide.

Q. Well, is it really necessary to do that?

A. It is usually done especially where they have to switch over a trestle almost daily and regularly.

Q. Well, take, now, Mr. Duffe, this point with reference to switch-
[fol. 484] ing, what have you to say about the switch engine from the yards over at Jackson coming out there and doing that switching?

A. That would be the simplest way to handle it.

Q. What would be necessary in order to do that?

A. The switch engine would come out there do the switching and go back to the yard.

Q. Suppose the yard limit extended to this point what is there to prevent the A. & V. moving the yard limit board out beyond this point?

A. There is no particular reason why they should not.

Q. As a civil engineer and having been engaged in the construction of railroads state whether or not there is any objection to doing this?

A. No, sir.

Q. Something was said about using the main line in making the switching, what is customary about that, do you know?

A. I don't understand what you mean.

Q. The point I want to make is whether or not good railroad-ing will permit the use of the main line by switch engines within the yard?

A. They always do it, all do it sometimes and most of them regularly.

Q. Do you know any points where it is done?

A. Plenty of them.

Q. Well, say that there was a car setting on this interchange track here for the A. & V. and A. & V. passenger train that is com-
[fol. 485] ing east to Meridian, suppose that passenger train held that track until after it passed Pearson before any train could come in on the block signals, state to His Honor whether or not that would give a switch engine time to run in and get a car and run back into the yard at Jackson?

A. Before the west bound train would get there?

Q. If the passenger train leaves Jackson coming east and no other train can go in there until after it passes Pearson? Would a switch engine have time to go in there and get a car and take it back to the yard at Jackson?

A. I think so.

Q. Something has been said about how often the trains run on that road. How long were we out there yesterday making this examination?

A. Let me see, we got there about 10:30, and it was a quarter of one o'clock when we left to come back.

Q. Did you see a train out there?

A. I don't remember seeing a single train on the track.

Q. Did a train pass on that track while we were out there?

A. I didn't see any.

Q. That was 2¼ hours?

A. Yes, sir.

Q. Something was said, Mr. Duffee, about this connection here interfering with the handling of interstate stuff, interstate cars, and interstate traffic, generally, what do you think about that?

Mr. Monroe: If the Court please, we want to object to that.

[fol. 486] Q. What is your judgment?

Mr. Monroe: That is not what he qualified for.

The Court: I sustain your objection.

Mr. Stone: We except to the ruling of the Court.

Q. Mr. Duffee, taking into consideration both of these trestles, the dump and the curve and Curran's Crossing, and state to His Honor whether or not you have the correct point for this junction?

A. It is not only the correct point, but it is the only logical point for it.

Q. Now, in the bill, Mr. Duffee, it is alleged that the natural facilities between the two roads, if a junction be made at the point sought by it will necessarily be an angle between two opposite and divergent curves which is materially objectionable do you know the kind of switch that they state will be required there?

A. Yes, sir, that is nothing more than a term. It is simply an open switch for switching in entering the main line.

Q. What about the objections to this junction being on opposite or diverging curves?

A. One of the curves is this way and the other is out that way. (Ind. with his hands.) And in switching the outer rail is super elevated on account of the centrifugal force of the train on the A. & V. track on the curve, but on our track there would be no speed of our trains at the junction of the A. & V. and there would be no need of such elevation. I explained before in connection with the A. & V. generally that there would be no change in the super elevation of [fol. 487] their track at all. We would make our outer rail conform to theirs.

Q. State whether or not there is any objections to the way you propose to make the connection?

A. I don't see any objections.

Q. State what danger there would be attached to it, if any?

A. No more danger than in any other switching, which is negligible in good railroading.

Q. Would this switch at this point interfere in any way in the use of the A. & V. block signals? If so tell the Court in what way?

A. There is no reason why it should interfere with their block signals.

Q. Tell the Court how a block signal operates?

A. The block signal is operated by an electric current, which passes through the rail at a certain point which throws the signal and shows that there is a train in the block.

Q. State whether or not it would interfere with the operation of the block signals?

A. No.

Q. Mr. Duffee, something has been said about a lock switch, and de-rail, and it has been said that that would be no protection as the lock would be thrown away. State to His Honor whether the lock system is a safe device for railroad people to use?

A. It is.

Q. What is there to hinder the employees from locking the switch in the main line? I mean to prevent them entering the main line?

A. Nothing.

[fol. 488] Q. If a lock switch is used as it is intended to be used what danger there would be to the A. & V.?

A. None.

Q. State to His Honor why this de-rail switch is put there, the purpose of it?

A. It is put there in order to prevent the train men of the Jackson & Eastern from using the tracks of the A. & V. Railroad.

Q. It is put there to prevent them from using the A. & V.'s track?

A. To prevent them from going in and interfering with their railroad.

Q. If the lock is on there, state to His Honor whether or not the employees of the Jackson & Eastern could go on there with their trains?

A. They could not.

Q. How is the switch protected?

A. By a lock, inter-locking switch.

Q. If that is a de-rail switch there with a lock on it, that lock is used by whom?

A. It is used by the A. & V. people.

Q. State how the Jackson & Eastern people could get their trains on the A. & V. track?

A. They would have to get the lock used by the A. & V. brakemen, unless it was left unlocked.

Q. Do you know why the employees of the railroads should throw these locks away?

A. No, sir.

[fol. 489] Q. This provides that that switch and turn out if the interchange is made between the A. & V. and the Jackson & Eastern, that the turn out is to be protected by a lock and the main line of the A. & V. is to be further protected by a de-rail switch, this to be placed on the rail of the applicant at a point 100 feet from the turn out, the de-rail switch to be locked when not in use for the interchange of cars. If this is done what protection would that give to the A. & V.?

A. It simply bars absolutely the switching of the cars of the Jackson & Eastern on the main line.

Q. It is alleged, also, in the bill, that a junction at this point between the two roads with diverging curves would prevent the use of the automatic coupler. The first question I want to ask you what occasion there would be for the coupler in this connection?

A. I can't see any, in coupling the cars of one track to the cars of another track.

Q. Well, what do you say?

A. It is always used in coupling cars on the same track.

Q. Well, take this interchange track, if the A. & V. main line engine goes on the interchange track to get a train left by the Jackson & Eastern Railroad, what would be the effect of these diverging curves, of coupling the cars on this interchange track?

A. Not a bit.

Q. Suppose the A. & V. had a train to go on the Jackson & Eastern track, would the diverging curves interfere with the automatic coupling?

A. Not a bit.

[fol. 490] Q. I used the word train, suppose they wanted to deliver a car, would that interfere with the automatic coupling in any way?

A. No, sir.

Cross-examination by Mr. Monroe, for the complainant:

Q. You stated that you were engaged in civil engineering, are you now connected with any particular line or road?

A. No, sir.

Q. But you have been employed by the Jackson & Eastern in connection with this litigation haven't you?

A. Yes, sir.

Q. You are in their service and expect a compensation from them in connection with this litigation?

A. I suppose so.

Q. You said that you were in the employ of the L. & N. a part of a year, what part of a year were you with the L. & N.? In what season or how many months?

A. About 8 or 9 months.

Q. What was your position with them?

A. I was assistant to the Division Engineer.

Q. Whereabouts were you?

A. At Montgomery, Alabama.

Q. When was it?

A. In 1904 and 1905, or 1905 and 1906.

Q. You said that you were with the Fort Morgan a part of a year. What was your position?

A. Rod man and draughtsman.

Q. That is the man that carries the rod and white stick?

[fol. 491] A. He is generally an assistant.

Q. You stated that you were with the Meridian & Memphis, what is the length of that line?

A. Approximately 32 or 33 miles.

Q. That is its entire length?

A. Yes, sir.

Q. How many trains run on that road daily?

A. One train each way, passenger and freight.

Q. You said that you were with the G. M. & N. and some interruptions were made. Let's get the details?

A. I was with them when the corporation was known as M. J. & K. C.

Q. For what period of time were you with them?

A. From March 1908 until the road's name was changed, and I forget the exact date of that, about two years later. There was a change in the operators.

Q. I am not making any point about the change in the name of the road, I want to know for what period you were with them?

A. Until about January 1, 1912.

Q. What was your position with them?

A. First I was residence engineer, which is division engineer on some road, and later as locating engineer.

Q. Whereabouts were you located?

A. My headquarters?

Q. Yes?

A. First I was at New Albany, Mississippi, when I was locating in the field.

Q. Where was your general location?

[fol. 492] A. Between Middleton, and Jackson, Tennessee.

Q. Give what operations you had control of from 1908 until 1912?

A. Only what I got from observation and association with the division officers.

Q. You were between Middleton and Jackson?

A. Yes, sir, and my association with the general manager.

Q. You stated that you were in the field between Jackson and Middleton, Tennessee, was there any operation in that neighborhood?

A. I was locating and extending the road.

Q. As an engineer in the field did you have any opportunity observing the operating conditions of the road?

A. Not for the few months that I was up there.

Q. What was the next period that you have given, and with what road?

A. Between January 1, 1912 until January 1, 1914, I was chief engineer of the M. & M.

Q. That was the same dates that you gave awhile ago?

A. I think so. During part of that time I worked for both roads.

Q. You were employed by both at the same time?

A. I divided my time between them. I located this road and left and went back to Tennessee and then I came back to this road during the construction.

Q. After January 1914 what did you do?

A. I was back with the G. M. & N. under the name of the N. C. M. & C.

Q. That was the same road as you stated that you were with awhile [fol. 493] ago?

A. Yes.

Q. From January 1914, how long did you remain with them?

A. From 1914 up until January 1, 1920, almost continuously, during that time there were a lot of times when I got a leave of absence.

Q. What was your position with these people in that six years?

A. Well, locating engineer.

Q. Were you actually doing the locating?

A. Yes, sir, down on the Coast.

Q. During what year?

A. This was part of the six years.

Q. What part of it?

A. About a year I expect, my time was mostly taken up with locations.

Q. And after that location?

A. I was special engineer, I might say that I was special engineer for the general manager.

Q. Around what period of time?

A. From 1915 up to 1918, about to January 1, 1919, that would be 1915, 1916, 1917, and 1918, during that time I held the title of valuation engineer which I handled in connection with that work.

Q. They had in this last five years you mentioned a locating engineer's corp, a chief engineer and you were the special engineer?

A. I reported to the general manager.

Q. How much of that time did you do valuation work?

[fol. 494] A. Almost continuously except one year.

Q. What year was that?

A. 1917.

Q. Prior to this five year period, the period between 1908 and 1914, what did you do?

A. I gave that as residence engineer, locating engineer.

Q. During that time did they have a chief engineer on the staff?

A. Yes.

Q. And you were reporting to whom during that time?

A. I reported to the general manager and to the superintendent as residence engineer.

Q. From 1919, January 1, 1919, what did you do?

A. I was chief engineer of the railroad.

Q. Chief engineer of what railroad?

A. The G. M. & N. and was then in charge of the maintenance and way department of the entire system, and also in charge of the track.

Q. During this period from 1908 to 1912 and from 1914 to 1919, you were not, as I understand you, not in the regular engineering force of the road at all, but you were a special engineer or resident engineer and reported to the general manager?

A. Yes, sir.

Q. You said that you were with the Jackson & Eastern part of a year, what part of a year?

Q. About three months, about March, April and May, locating this very road which is under discussion.

Q. What year?

A. 1921.

[fol. 495] Q. That was in 1921?

A. Yes, sir.

Q. This map which is dated May 10, 1921, that takes in the date of your employment with the Jackson & Eastern?

A. I said from March 1 to May, March, April and May, about three months.

Q. 1921?

A. Yes, sir.

Q. Now, did you leave the employment of the Jackson & Eastern in May, 1921?

A. Well, I was there handling that work, and I can't give you the dates, exactly.

Q. At the time you left this road in May or June, 1921, when did you leave it?

A. I can't tell you exactly.

Q. At any rate, it was some time after May 10, 1921, when you left this road, at that time had any of this dump you have referred to in the neighborhood of the proposed junction been built?

A. No.

Q. When was the last time in 1921 that you were on the ground in the vicinity of this proposed junction?

A. Sometime in May.

Q. In 1921?

A. Yes, sir.

Q. When did you next go over there after 1921?

A. Let me see, I passed through there in 1922, but I didn't [fol. 496] make any observations particularly.

Q. What month was that?

A. In September.

Q. In 1922?

A. Yes, sir.

Q. Do you know whether this dump was built at that time or not?

A. I think so, but I am not sure.

Q. Couldn't you be certain?

A. No, sir.

Q. When you went to the road now known as the G. M. & N. in 1908, do you know how many passenger trains in each direction it had on its road?

A. Two.

Q. When you left that road in 1920, I think you so stated, how many passenger trains did it have on in each direction?

A. Two.

Q. How many freight trains in each direction daily?

A. There were two, then there were some that were irregular, there were about three.

Q. Do you know the scheduled freight trains on it at the time?

A. Yes, sir, three scheduled freight trains each way.

Q. Now, have you at any time had any experience as an operating official? I mean in charge of the operations of trains of any of these railroads that you pointed out?

A. Not in actual charge of it, but I have been in close association of the operating officials and have been consulted quite frequently.

Q. You were not employed in any different way than you have [fol. 497] stated you were employed?

A. I will say that my experience was a little unusual in that respect, in that I was thrown in closer contact with the operating officials than most engineers, and in that way I had an opportunity to study it a good deal more closely, due to that association.

Q. You produced here a map that is marked Exhibit "A" to your testimony, this map purports to show the proposed survey line of the Jackson & Eastern Railroad between Union and the proposed junction point?

A. Yes, sir.

Q. It shows the actual location from Union to Sebastapol?

A. Yes, that is in operation at the time.

Q. And the survey line on to the proposed junction?

A. Yes, sir.

Q. Can you take this proposed point of junction and tell us where is the closest point to that proposed point of junction where the Jackson & Eastern has any finished track?

A. Of what date?

Q. Of today?

A. I don't know where the last finished track of the Jackson & Eastern is.

Q. As of the last date that you were familiar with it?

A. The closest point on the route proposed for the J. & E. to the proposed point of junction where the Jackson & Eastern has got any finished track?

Q. Yes?

A. Over the line surveyed?

[fol. 498] Q. You don't understand me. How near to this proposed point of junction is there any finished track of the Jackson & Eastern?

A. I don't know.

Q. I am asking about when you were familiar with it?

A. Sebastapol.

Q. How far by the surveyed line is it from Sebastapol?

A. I can't now recall.

Q. Give your best judgment?

A. 62 odd miles.

Q. In what county is Sebastapol?

A. In Scott County, practically on the line of Leake.

Q. In what county is the proposed point of junction?

A. In Rankin County.

Mr. Stone: There is nothing in the bill or answer touching that.

The Court: I overrule the objections.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Witness, you don't deny that at the proposed point of junction that the A. & V. Railroad is on a curve, do you?

A. No.

Q. And you don't deny that at the proposed point of junction the Jackson & Eastern Railroad is on a curve?

A. No.

Q. And you don't deny that the A. & V. at the proposed point of junction is on a fill of from 8 to 12 feet?

A. No.

[fol. 499] Q. And you don't deny that the proposed point of junction is in the immediate vicinity of a crossing of the A. & V. Railway on the Dixie Highway known as Curran's Crossing?

A. No.

Q. And you don't deny that the proposed point of junction is mid way or approximately mid way between two trestles in the A. & V. track?

A. No.

Q. What is the approximate length of each of these two trestles?

A. One of them is something like 340 feet and the other is about 400 feet.

Q. Let's take the one called Farish Bridge, what is the length of that trestle?

A. About 340 feet.

Q. That is in the immediate proximity of the highway bridge on the concrete road?

A. Yes, sir.

Q. What is the length of the open span on that highway bridge?

A. You mean the entire bridge?

Q. The entire opening?

A. About 240 feet.

Q. 240 feet?

A. Yes, sir.

Q. That is the bridge there near Farish Bridge, but the one on the highway?

A. I understand.

Q. Now, Mr. Witness, to go back to this map, Exhibit "A," is [fol. 500] Sebastapol east or west of Pearson?

A. It is northeast.

Q. Northeast, about how many miles east?

A. You mean on a straight line?

Q. Yes.

A. About, on a straight line about 55 miles, 50 or 55.

Q. You don't mean to tell the Court, do you, that you couldn't run that line of railroad from Sebastapol to Pearson without first coming to the west of Pearson and then doubling back to the eastward, do you?

A. Not for the purpose that we want this road, the territory we want to run through.

Q. Does the proposed survey of your road pass through Lucknow?

A. Yes, sir.

Q. Is Lucknow to the east or west of Pearson?

A. It is northeast.

Q. Approximately how far is it from Pearson to Lucknow?

A. About four miles.

Q. Take the way that your line would run from Lucknow to Pearson, and from Lucknow to the proposed point of junction and tell me if there is any great difference in the distance?

A. No, sir, no great difference in the distance.

Q. Can you tell me what mile post on the A. & V. it is that you are closest to at your proposed junction point?

A. No, I don't remember that.

Q. Could you look on the map, Exhibit "F" and tell me?

[fol. 501] A. I can tell you what it is marked?

Q. Tell me what it is marked?

A. 94.

Q. Now, how far out in that valley of the Pearl River have you seen the water extend, during the period, the short period that you were out there?

A. How far out?

Q. Out east along the embankment of the A. & V. Railroad?

A. I have noticed it as far out as two miles.

Q. From the point of the proposed junction?

A. Yes, sir.

Q. That would be out at approximately at mile post 92, if this is 94 at the point of junction?

A. Yes, sir.

Q. That was water which came from the overflow of Pearl River?

A. Not all of it.

Q. Some of it came from the overflow of the River?

A. Near the junction, yes.

Q. Now, how far have you located your red line which designates the line of hills on map Exhibit "A" from Pearl River?

A. I never expressed any distance.

Q. They are up this way, are they? (Ind.)

A. Yes.

Q. These hills approach within a mile of the river?

A. About a mile.

Q. What is the height of these hills?

A. I have only studied them from the geological survey, they have considerable altitude.

[fol. 502] Q. About what, would you say?

A. Enough to prohibit us from trying to build a railroad through them.

Q. You say that you had occasion to look on the geological survey, I will ask you to look at the map, and tell me, after you have looked at the map, the contour of the map, and explain about those hills?

A. Only those over 20 feet are shown here, then if the others are not 20 feet higher there is no difference shown on these small maps, we have a contour line here near the river, then we have another out perhaps a half mile showing it is 20 feet higher.

Q. Give the nearest contour line north of the A. & V. on the map?

A. You mean east of the River?

Q. East of the River along the A. & V. the nearest contour line showing an elevation?

A. About a mile and a half.

Q. I asked you to take it north of the A. & V. to the east of the River, on the line of the A. & V. from Pearl River Bridge, is there a contour line north of the A. & V. Railroad?

A. You mean following the A. & V.?

Q. Yes?

A. Following the A. & V. the first contour line would be about three miles, from the closest point of the River about two miles.

Q. Now, then, give me the closest second contour line?

A. The next would be the hills in there.

Q. And there is 20 feet between each one?

[fol. 503] A. The intervening heights are not shown on the small maps.

Q. And any other hills between here and that contour line would be so small as not to be detailed on this map, and hills that are too small to be shown on the map are too small to hinder a railroad running through that territory?

A. They would not hinder it, unless they were building at the least possible cost.

Mr. Monroe: In connection with the testimony of this witness we offer in evidence the U. S. Geological Survey Map, and will have marked Exhibit "B" to the testimony of L. W. Duffee on Cross Examination.

The map was introduced and was then and there so identified by the stenographer.

[fol. 504] Q. Did you make any attempt to make a survey, Mr. Witness, which would let your line approach Pearson from the east?

A. No, sir.

Q. You made no preliminary survey with that in view?

A. No, sir.

Q. Have you made any survey or estimate of an entrance into Jackson?

A. The Jackson & Eastern directed me to make a junction of their road with the A. & V.

Q. Have you made any preliminary examinations?

A. No, sir.

Q. In no other way than you have indicated?

A. No, sir.

Q. At no time?

A. No, sir.

Q. Has any one else to your knowledge done so?

A. I can't say, if they have I don't know it.

Q. I am simply asking as to your knowledge, as to whether any one else has made such a survey?

A. I know of some other surveys.

Q. What other surveys are these that you know of?

A. I happen to know that the Illinois Central made one and the New Orleans and Great Northern had planned a line there.

Q. Do you know of any survey by the Jackson & Eastern?

A. No.

Q. Do you know of any other survey for the Jackson & Eastern?

A. No.

Q. Now, these other surveys that you know of, that you say were [fol 505] coming into Jackson from the same general direction, did they propose to make a junction at this proposed point?

A. I don't know.

Q. Did you look them up in connection with your proposed route?

A. No, sir.

Q. Did you make any preliminary or other survey with a view of determining how the line of the Jackson & Eastern would proceed if it skirted the high lands on the east of Pearl River Valley, about a junction of the Jackson & Eastern with the A. & V.?

A. Yes, sir.

Q. If such a course was pursued, skirting the high lands shown us on this map Exhibit "B" to your testimony, where would it go?

A. Understand, that I said that I made some examination to see if it was practical, but I didn't consider it further.

Q. Begin at a point marked Drake's Church on Exhibit "B" to your testimony, if you skirted all the high ground, approximately where would you approach the A. & V.?

A. I couldn't mark a line that would be of any value without running such a line with the instruments of survey.

Q. Put it there to the best of your knowledge, opinion and belief?

A. From Drake's Church?

Q. Yes?

A. (Witness draws line.)

Q. To a junction of the A. & V.?

A. There it is.

Q. You have drawn that line with a pencil on Exhibit "B" have you?

[fol. 506] A. I have.

Q. Will you draw that with a red pencil, it doesn't show, re-trace your black pencil line with a red pencil?

A. This line is only drawn as indicated on this map, Exhibit "B" with no reference to any instrument survey or details, and with no knowledge of the ground.

Q. Will you give me the distance from the place where the A. & V. Railroad crosses Pearl River to the place where the red line which you have just drawn intersects the A. & V.?

A. From the bridge?

Q. From Pearl River, yes?

A. About three and $\frac{1}{4}$ miles.

Q. That is to say, it is $3\frac{1}{4}$ miles east of the A. & V. bridge at Pearl River?

Q. How far east is it from your proposed point of junction?

A. About $2\frac{1}{2}$ miles.

Q. You must be wrong. What was the first measurement that you gave me, as being the distance at the bridge at Pearl River?

A. $3\frac{1}{4}$ miles.

The Court: We will now adjourn until tomorrow at nine o'clock.

[fol. 507]

Friday, August 17, 1923—nine o'clock a. m.

Pursuant to adjournment Court was called at nine o'clock when the following proceedings were had, to wit:

L. W. DUFFEE resumed the witness stand.

Cross-examination by Mr. Monroe:

Q. Mr. Duffee, you stated, I believe, that you were in the vicinity of the proposed junction during the high water in 1921?

A. Yes, sir.

Q. How long did that high water continue in 1921, approximately?

A. From the time it started to rise, it was several weeks until it subsided.

Q. Did the water go over the concrete road that we have discussed here?

A. When I saw it it was just about level with it, and run over about an inch possibly in one or two places.

Q. Did it go over the gravel road, that has been designated as the Fannin Road which takes out of the concrete road and goes northeast?

A. Parts of it.

Q. Did you see the water when it was at its highest over these roads?

A. Yes, sir.

Q. You are certain of that?

A. Well, I didn't stay there day and night, it probably reached its crest without my knowledge, subsided within an inch or two.

Q. Did you go out on these roads during the high water yourself?

[fol. 508] A. Yes, sir.

Q. How far out and up the Fannin Road was the road submerged?

A. It was submerged in places you understand, I suppose about two miles out from the junction with the concrete road.

Q. Two miles northeast?

A. About that, yes, sir.

Q. Have you got a profile of your proposed embankment or dump?

A. Yes, sir.

Q. Have you got it with you?

A. Yes, sir.

Q. Will you let me see it please?

A. All right.

Q. Now, Mr. Duffee, beginning with the point of switch on the

A. & V. Railroad, how far do you go before you reach your first proposed opening?

A. 700 feet.

Q. How much of that is on the A. & V., and how much of it is off the A. & V. right of way?

A. About 150 feet of the clearance point of the track, that would leave 550 feet.

Q. How far is it from the edge of the A. & V. present dump to the first opening?

A. Well, that is about the same as the clearance.

Q. About 550 feet?

A. Yes, sir.

Q. Then the opening is how much?

A. 100 feet.

[fol. 509] Q. Then you go how far to the next opening, give it exactly, if you can?

A. 1,100 feet.

Q. And the opening is how much?

A. 200 feet.

Q. Then you go what distance to the next opening?

A. 1,900 feet.

Q. And the opening is how much?

A. 100 feet. Wait a minute, there is another opening not shown on here. That would cut about 1,400 feet of that off, with a 10 foot opening.

Q. Then it is 1,400 feet to a 10 foot opening?

A. Yes, sir.

Q. Then how far do you go from the 10 foot opening to the next opening?

A. About 500 feet.

Q. Then what is your opening?

A. 100 feet.

Q. What is the next solid bank?

A. The distance?

Q. Yes?

A. About 830 feet?

Q. Then what width of opening?

A. 42 feet.

Q. Then what is your next solid bank, the length?

A. About 750 feet of bank then a 24-inch pipe culvert.

Q. That is one foot of opening. What is the next solid bank?

A. How do you get that?

[fol. 510] Q. You are right, that would be a two-foot opening.

A. Yes, a two-foot opening.

Q. What is the next opening?

A. We have about 1,700 feet then a 56 foot opening.

Q. Then a 56-foot opening?

A. Yes, sir.

Q. What is the distance to the next opening?

A. About 2,050 feet to a 24 inch pipe.

Q. A two-foot opening?

A. Yes, sir.

Q. Then what next?

A. We have 2,700 feet.

Q. 2,700 feet?

A. And a 36-inch pipe.

Q. A three foot opening?

A. Yes, sir.

Q. Now, then, what is the next distance?

A. 2,100 feet.

Q. 2,100 feet and what is the opening?

A. A 36-inch pipe or a three-foot opening.

Q. Will you give me now the total width of openings and the total length of solid fill from the point of the beginning up to the upper end of the two foot opening, that is the third from the last which you have indicated?

A. That total distance which you spoke of in round figures is 9,040 feet.

Q. 9,040 feet, what is the total number of feet of openings in that 9,040 feet?

[fol. 511] A. 512 feet.

Q. Will you give me the percentage of opening to the solid fill there?

A. 5.7 per cent.

Q. Now, where would that 2-foot opening which was the last opening you referred to be on this map, Exhibit "F," locate it there, please?

A. It would be right there. (Ind. on the map.)

Q. Will you mark that with a red pencil, a line across the track and write 2-foot opening, the figure "2" and "ft." opening?

A. I will do so.

Q. If I understand you correctly and if I am wrong you correct me, in the distance from the point "J" that is the beginning of your track up to the point marked 2-foot pipe on the map "F" the percentage of opening is 5.7 per cent of the solid fill?

A. Nearly six per cent.

Q. You said, I believe, that you had made some observation of the A. & V. track. Have you with you anything from which you can tell me about the openings under the A. & V. track from the vicinity of the point of connection up to the river?

A. In a general way only.

Q. Don't you know that the A. & V. immediately east of the point of connection has approximately 1,100 feet of opening in 5,500 feet or 20 per cent of opening?

A. No, I don't know that.

Q. And don't you know that they have 400 feet of opening just the other side of the junction?

[fol. 512] A. They have some openings but I don't know how much.

Q. Did you ever know exactly what they were?

A. No, I saw no necessity of knowing. I judged that they were sufficient.

Q. You didn't obtain any correct knowledge as to what the A. & V. openings were?

A. I didn't consider it had any bearing on our case at all and I didn't take the trouble to ascertain that. The A. & V. had its own drainage problems which did not effect the location or construction of the Jackson & Eastern.

Q. I would like for you to give me now, please, the elevation of your track as compared with the elevation of the valley floor, I may use that?

A. The general level of the surrounding ground there?

Q. Beginning at the dump and going over this same 9,000 odd feet to the northeast?

A. Where we join the A. & V. Railway our grade is coincident with that of the A. & V.

Q. How high above the valley floor?

A. About eight feet.

Q. And beyond that point of the A. & V. connection, what is the average height of the track?

A. I don't know the average, I know it at various points.

Q. Answer the question. What would you say the average height of your track was above the valley floor?

A. About three and a half feet.

Q. That is all the way up?

A. For this 9,000 feet.

[fol. 513] Q. Now what is the average height above the valley floor of the gravel road which runs from the concrete road northeast?

A. From one to two feet lower than that.

Q. From one to two feet lower?

A. Yes, sir.

Q. Now, what is the height of your road for the first two thousand feet from the point of intersection of the A. & V. dump?

A. About 5½ feet average.

Q. That is for two thousand feet?

A. Yes, sir.

Q. What is the average height of the concrete road in that 2,000 feet?

A. About three feet.

Q. Beginning where you left off at the 2-foot mark and coming up to the intersection of the proposed line with the concrete road, what is the average height of your dump in that sector?

A. About four feet.

Q. What is the average height of the concrete road in the corresponding sector?

A. The same as I answered before.

Q. Three feet?

A. About three feet.

Q. Now, in giving me these elevations what elevations were used, the top of the dump?

A. What we call a sub grade, which is to make it plain to the Court, is practically the same as the bottom of the ballast.

[fol. 514] Q. Then you are going to have what ballast, how many feet of ballast?

A. I can't answer that, that is a construction problem.

Q. You state in your condemnation proceedings that you are going to have, in the vicinity of the A. & V. a foot and a half of slag, gravel and ballast, is that approximately the usual construction a foot and a half of ballast?

A. We would make the junction with the A. & V. conform to the A. & V.'s existing conditions. That I would say was customary to make the connection conform to the previous railroad's standard.

Q. Is it customary to use a foot and a half of ballast as stated in your condemnation proceedings?

A. It is very desirable, that much, at least, but all roads don't have it, because they can't afford it.

Q. But it is essential on top of a sub grade that you should have some ballast?

A. A kind of ballast.

Q. It is essential to have a certain amount of ballast, is it not?

A. That would depend on the standard of your railroad, the traffic.

Q. You are a construction engineer, are you not?

A. No, sir.

Q. What are you?

A. Civil engineer.

Q. Do you mean to tell the Court that after all you have had to [fol. 515] do with the construction of these lines that you can't give the Court any idea what depth of ballast would be required?

A. I can tell what it ought to be.

Q. What ought it to be?

A. At least one foot.

Q. About that foot of ballast what would there be, the rail?

A. The ties and rail, the ties would be practically imbedded in the ballast.

Q. What would be the height from the top of the sub grade to the top of the rail?

A. That would possibly be about two feet.

Q. So that in getting these average figures that you have given me to get to the top of the rail level you would add approximately two feet, would you?

A. Yes, sir, but I want to add that, of course, adjustments are always made, connections, with the understanding that they will be consistent with crossing of other railroads.

Q. This plan as proposed, the plan of actual construction as given after studying the situation more, there is nothing to prevent changing or altering it?

A. It might be done.

Q. There would be nothing to prevent you then, from raising the grade?

A. No, sir.

Q. Did you make any investigation of the height of the high water in former years in Pearl River Valley?

A. I asked questions of old citizens living there, who had seen it. [fol. 516] Q. You made no other investigation than that?

A. No, but I made that very fully.

Q. And you confined yourself to asking questions of old citizens?

A. Coupled with my personal knowledge and experience with the high water.

Q. You had not been on this ground prior to '21 during the high water, had you?

A. No, sir.

Q. Did you learn how the high waters of former years compared with the '21 high water?

A. Yes, sir, to a certain extent.

Q. Did you learn in what years the water had been the highest and to what heights it had reached?

A. I was told how high it was, that it washed the A. & V. Railroad out several times and after each time they had gone there and had kept raising the track, and that the last time they got it above the high water.

Q. Did you make any scientific or accurate examination to find out where the high waters had gone in former years, what volume of water had gone down the valley?

A. I did all that I considered necessary in locating the Jackson & Eastern, no more.

Q. What did you consider necessary in locating the Jackson & Eastern?

A. To see that the expanse of water would do no damage to the Jackson & Eastern or other construction, and would do no more damage to the adjacent property, the highway or the Alabama & [fol. 517] Vicksburg Railroad.

Q. What was your aim in regard to the Jackson & Eastern concerning the high water?

A. On the original construction, hold the first cost down to a minimum and put the road bed above what you might say was the average high water, like that in 1921.

Q. On the original construction you said while ago, to keep the cost down to a minimum. Did you draw a distinction between the original cost and the expense of up keep?

A. Yes, sir, like every other railroad, it is often necessary to raise the track.

Q. You had in mind to make your original construction a certain grade, and the expenses were figured?

A. Whatever would become necessary.

Q. I judge from what you say what you determined the height of your first construction was going to be the cost, to some extent?

A. To some extent. I expected to expend enough to get the road above the high water, but it was not necessary to expend anything against floods that might come, and never existed before.

Q. You have in mind, I take it, in a substantial construction, to throw the road bed up, have you not?

A. If it proved necessary, no doubt, but I can't foresee these things, and no one else can.

Q. You thought it reasonable for the Jackson & Eastern to pursue a course somewhat similar to the A. & V.?

A. They might do it.

Q. You would think that if they got under high water several times they would change the road bed?

[fol. 518] A. I should think they would, also put in additional openings if they found it necessary.

Q. You said that the water which went under Farish Bridge would never come near the Jackson & Eastern Railroad. You were referring to the water which had passed south of Farish Bridge?

A. After it went through, yes, sir.

Q. Now, Mr. Witness, let us suppose, look at this map, Exhibit "F", that there were no roads of any kind between the Jackson & Eastern proposed line of road and Pearl River and let us suppose that you built an absolutely solid embankment for the Jackson & Eastern of the height that you said you proposed to build it from your point, 2-ft. pipe down to the point "J". Please state what effect such a construction would be upon the flood waters of Pearl River, in regard to the volume of water against the A. & V. embankment from the point "J" to the main bridge of Pearl River?

A. If the supposed condition existed it would have a tendency to retain the flood waters and spread it out into the low lands and would concentrate more waters at that point and further down the River.

Q. By that point you mean the point along the A. & V. embankment from the point "J" to the Pearl River Bridge?

A. Yes, sir, that is where they join there.

Q. I believe you said, in looking at map "A" that you showed us the line from Sebastopol, that you started out to survey or locate a line from Sebastopol to Jackson, did you not?

A. Yes, sir, that was the route.

Q. Did you locate the line from Sebastopol to Jackson?

[fol. 519] A. Only part of it.

Q. How did you propose to get your line to Jackson.

A. How do you mean, how were we going to get into the town of Jackson?

Q. How did you propose from where you surveyed it to get to Jackson?

A. We proposed to go down Pearl River.

Q. How did you propose to get the road from the point you surveyed it to Jackson?

A. We didn't propose to. We proposed to make an interchange and the Jackson & Eastern would turn over their cars to the A. & V.

Q. Then you abandoned your plan for a road from Sebastopol to Jackson?

A. You would say it was Jackson. There is a distinction in getting up to the courthouse and the outer edge of town. We go to New York City and we stop on the other side of town, but we say we are at New York City.

Q. It must have been a long time ago, they stopped going over there 10 or 15 years ago?

A. I went through the tunnel myself.

Q. You say that you went through the tunnel and went into New York?

A. Yes.

Q. I believe you said a moment ago that you proposed to make an interchange, what have you to say about passengers at this proposed junction?

A. I think I said interchange the freight, and unload the passengers where they could get into town.

Q. Unload them?

A. Yes, sir.

Q. You were not proposing to interchange passengers at this point with the A. & V.?

A. We didn't consider that, I didn't consider it in locating this point, that would be for the management to decide.

Q. You didn't consider in making the location whether it was a feasible place to interchange passengers or not?

Mr. Stone: We object, there is nothing in the bill or the answer touching the interchange of passengers.

The Court: That's true, but I think that question should be considered, and I overrule your objection.

Mr. Stone: We except to the ruling of the Court.

Witness: I would say that it would be possible, and that was as far as I considered it.

Q. Would that fact that the A. & V. road and therefore, necessarily the J. & E. is going to be on an embankment at that point of intersection have any bearing upon the desirability of the proposed junction as a place to interchange passengers?

A. It wouldn't be very desirable without doing considerable work there to elevate it up and making a platform.

Q. What is the length of a passenger train, approximately, on the A. & V.?

Mr. Stone: We object to all the testimony with reference to the interchange of passengers at this point for the application for the eminent domain does not anywhere mention any such proposition. We move to exclude all the testimony bearing upon that point.

[fol. 521] The Court: I overrule your objections.

Mr. Stone: We except to the ruling of the Court.

A. I can only state from casual observation.

Q. That is all I want?

A. I couldn't give the average, some of them are longer than others.

Q. Just approximately, how many cars in each of these trains and how long a car is?

A. I should think that the average train would have about four

cars and the locomotive and tender, which would make it about 300 feet.

Q. How long is a car?

A. Cars vary in length, they usually run from 60 to 70 feet.

Q. You were including only the coaches and not the pullman's?

A. I didn't include the pullmans, local trains are much shorter.

Q. What would a pullman train's length be?

A. I can't tell how many pullmans they usually carry.

Q. What would be the length of a train carrying from 7 to 9 cars, including the locomotive, tender and passenger cars?

A. What is the number of cars?

Q. From 7 to 9, including the locomotive and tender.

A. About 600 feet.

Q. Would it be necessary in handling trains of that size with passengers on them to make and provide by widening and elevating the embankment a place for the handling of these passengers?

A. It would, but not for the full length of the train.

Q. Did you give any consideration to the exchange of mail or [fol. 522] express at this proposed point of intersection?

A. No, sir.

Q. You didn't consider it with reference to its feasibility for this purpose?

A. That was a minor detail, and I didn't consider it.

Q. Do you consider the United States mail and express in the railroad business a minor detail?

A. I regard it a very important consideration, but very easily solved.

Q. But you gave no consideration whatever to this matter?

A. No special consideration.

Q. What consideration of any kind did you give it?

A. The United States mail?

Q. Either mail or express?

A. I gave it the consideration to know that it could be done, that was all.

Q. Would the presence of these fills and this embankment facilitate the exchange of United States mail and express at this point?

A. It would not facilitate it so much.

Q. Would it be necessary to make provisions in regard to the embankment for the handling of mail and express?

A. There would probably have to be some grading done there.

Q. I believe that you stated that there was a trestle on the A. & V., two trestles on the A. & V. of approximately 400 feet each immediately on each side of this proposed point of junction?

A. Yes, sir.

[fol. 523] Q. Are you going to have a trestle on the Jackson & Eastern near the proposed point of junction?

A. Yes, sir.

Q. How far from the place where the line of the Jackson & Eastern leaves the right of way of the A. & V. would that trestle be?

A. I can't answer that question.

Q. You can give the distance to the culvert?

A. Yes, sir.

Q. What is that distance?

A. That trestle is about 700 feet from the point of switch, from the edge of the right of way it would be about 300 feet less than that.

Q. About 400 feet?

A. Yes, sir.

Q. In handling passengers would these trestles be an advantage or disadvantage?

A. They would be no special disadvantage. The trains could be stopped clear of the trestle.

Q. Would they be an advantage?

A. No trestle is an advantage to a road.

Q. In times of high water they would be of material advantage?

Mr. Stone: We object to you testifying.

A. From the train standpoint no trestle is of advantage.

Q. Now, would it be necessary to take any action concerning the A. & V. trestles in undertaking to stop passenger trains in that locality?

A. Passenger trains on which road?

[fol. 524] Q. On the A. & V.?

A. I don't think so.

Q. Do you mean that you would not—suppose you brought a passenger train up that point of junction and stopped it short of the switch point, where would it be with reference to this trestle?

A. There would be plenty of room for the passengers to get off the day coaches.

Q. Plenty of room to get off the day coaches?

A. Yes.

Q. If they were pullman passengers?

A. I have never seen pullman passengers get off at small places like this one, and no provisions are ever made for them, only for the passengers on the day coaches, most small places make no provisions for them, only the day coaches, you have never noticed in large cities as the pullman trains carry their passengers, carry a block and stop.

Q. In large cities?

A. Yes.

Q. Answer my question, I asked you if the pullman trains would not have to stop on these trestles?

A. No, sir.

Q. Would their passengers then walk through the trains to the front?

A. Yes.

Q. But if they stepped out of a pullman train?

A. They would have to step on the trestle unless there was a pathway provided for them.

[fol. 525] Q. Who would provide the pathway there, the Jackson & Eastern or the A. & V.?

A. That is not in my jurisdiction. I can't answer it.

Q. You said, I believe, that in 1921 you observed quite closely the concrete highway bridge at Farish Bridge?

A. Yes, sir.

Q. I believe you stated that you reached some conclusion from that observation, what was it?

A. I reached the conclusion that there was a great deal of water impounded against that road at that point.

Q. You reached a conclusion about the going of that bridge?

A. Yes, sir, the Farish Bridge was in danger.

Q. That was in 1921?

A. Yes, sir.

Q. Just a little more water would have taken the Farish Bridge away in 1921?

A. It looked like it might have, not the railroad trestle, the highway.

Q. I am talking about the concrete road?

A. Yes, sir.

Q. How far is the concrete trestle from the railroad trestle which we call the A. & V. Railroad trestle?

A. Right along side of it as close as it could reasonably be built.

Q. At the east end of the concrete trestle you can practically touch the railroad trestle?

A. Yes, sir. Touch the bank anyhow.

Q. Suppose a train comes up to the proposed point of junction [fol. 526] from the west, that is coming out of Jackson and stops short of the junction, where would that train be with reference to the Dixie Highway crossing known as Curran's Crossing?

A. Let me understand you, if you pulled up on the junction?

Q. Stopped short of the junction, coming from the west?

A. Coming to the point of junction, the tender would block the crossing.

Q. If any switching is done on the crossing does that block the crossing?

A. Temporarily.

Q. Is it desirable to switch over crossings?

A. No, but it has to be done everywhere.

Q. Why is it undesirable?

A. Because of the traffic crossing the crossing, the brakeman and switchman have to keep a closer look out to keep vehicles out of the way, also have to wait for them to pass. It slightly delays the movement.

Q. It adds an element of danger, does it?

A. Yes, sir, to a certain extent.

Q. You stated that your experience with high water was in Okatibbee, Siawashee, Tallahatta Creeks and the head waters of Chunky Creek?

A. And Tallashua.

Q. Are there two of them?

A. Yes, Tallahatta and Tallashua.

Q. How do these creeks compare in size with the Pearl River?

A. None of them are as large as Pearl River.

Q. Are any of them anything like as large?

[fol. 527] A. They are not nearly as large as Pearl River, but they are pretty good streams, some of them.

Q. As a train comes out and gets a good rate of speed where are the flange wheels with reference to the edges of the rails?

A. If the curve is super-elevated and the train is going at a fast speed I will say this, the flanges will bear against the bowl of the outer rail, the inside edge of the outside rail.

Q. Where the outer rail is super-elevated and the train is going at a slow speed?

A. This is not always the case.

Q. You noticed there was pointed out to the Court the other day that on this curve the inside edge of the outside rail of the A. & V. track has a high shine, didn't you?

A. Yes, sir.

Q. That high shine was put on the rails by what?

A. The flanges of steel wearing against it.

Q. You noticed that the inside edge of the inside rail on the same point were rusty and had no high shine?

A. Yes, sir.

Q. That indicated clearly that the flanges going around a curve pressed against the inside edge of the outside rail?

A. Under present conditions.

Q. Has that fact any bearing on the desirability of putting a switch on the outside of a curve?

A. It is never an ideal condition.

Q. I asked you whether the fact that the flanges press against the inside edge of the outside rail had any effect on placing a switch on the outside of a curve?

[fol. 528] A. To this extent, we wouldn't put one there if it was perfectly simple and feasible to get one somewhere else, the objection is so slight it is ignored in good railroading.

Q. You say you would not put one there if there was somewhere else to put it?

A. No.

Q. If you had an option of putting a switch on a tangent and putting one on a curve, where would you put it?

A. On the tangent.

Q. The reason is that the flanges pressing against the inside edge of the outside rail would have a tendency to split both the switch and the frog, is that true?

A. Not so much the frog, as the rail which holds the wheel out.

Q. You didn't answer my question. The reason it is objectionable is because of the tendency of the flanges to grind out the inside edge of the outside rail and split the switch?

A. There is always that tendency, but if the turn is properly put in the solid rail which the switch point bears against is bent in such way that the break is slight on the switch point and it holds the wheel out until it gets past the point and eliminates the danger.

Q. Did you ever notice the wear on a switch point as the result of the flanges grinding it out?

A. Yes, sir.

Q. Suppose we take a passenger train coming from the east to make a stop at that junction, coming from the west to make a stop

at that junction and it stops with its engine just clear of the point of junction, could it avoid either blocking that crossing or else having [fol. 529] the cars hanging out over the Farish Bridge?

A. Coming out of Jackson?

Q. And stopping clear of the crossing?

A. You would still have room there between the trestles to unload passengers, on your day coaches, at least.

Q. What is the distance from Curran's Crossing to the end of the trestle?

A. From Curran's Crossing to the trestle?

Q. Yes?

A. About 600 feet.

Q. What did you give as the length of our nine car trains?

A. About 600 feet.

Q. Is there the same objection to a switch on the inside rail of a curve as there is to a switch on the outside rail of a curve?

A. There is a little difference.

Q. What is the difference?

A. On the inside of a curve which is off the main line the super-elevation of the curve is in the same direction, and on the outside it has to be elevated up for at least be elevated, to the level of the super-elevated track.

Q. Which is the more dangerous, a switch on the outside of a curve or a switch on the inside of a curve?

A. I don't consider one more dangerous than the other when they are running at an average speed.

Q. Suppose that they are running at a high rate of speed, which is the more dangerous?

[fol. 530] A. It would be exceedingly dangerous, hazardous and criminal if the switch was on the outside of a curve.

Q. So that if you put a switch in a curve over which you had been running at high speed you must necessarily either reduce your speed around the curve or else be guilty of running your train at a hazardous rate?

A. To switch a car out on this side track would be dangerous, but I don't see that it would have any effect on the train running over the main line.

Q. Is it dangerous to run around a curve at a high speed when the switch is on the outside?

A. It is not considered dangerous if it is a well maintained road bed. In all instances they are dangerous to a certain extent. It is dangerous to cross a street because an automobile might run over us.

Q. You told me that you started out to make a survey of a line to Jackson, but you finally went up here to Curran's Crossing. There are about three buildings and cow sheds there? Maybe Five?

A. More than that.

Q. It is just a rural community there?

A. I call it suburban.

Q. Is there any residence in that vicinity of any size or dimensions?

A. Yes, sir, there are several stores there of no mean proportions, they have stores of that nature.

Q. Of what nature?

A. Of a suburban nature, and at least one fairly nice dwelling house, practically all there are dwelling houses.

[fol. 531] Q. You really do not seek to convey the fact on this record that Curran's Crossing is anything but a country cross roads?

A. I would call it a suburban point.

Q. How many car loads of freight would originate at Curran's Crossing?

A. I didn't figure that up.

Q. When you get to Curran's Crossing with your Jackson & Eastern train it is necessary for you to move back to Sebastopol and it makes it necessary to switch the Jackson & Eastern?

A. When we get to this junction, yes, sir.

Q. So that the natural direction in which your locomotive is headed is Sebastopol?

A. Yes, sir.

Q. Why did you object to having your locomotive headed up in an easterly direction on yesterday when you said you objected to it going to Pearson?

A. I considered that question in the nature of a trap to make me say something that I didn't want to say, speaking of an engine being headed in the direction of the main line, if I went into a point it makes no difference in what direction the engine would have to be turned around to get back on the same track, the compass direction has nothing to do with the direction as regarding straight line operations.

Q. The compass direction in which your locomotive was headed has nothing to do with the operations?

A. No.

Q. Then, I understand——

A. The engine must be turned around to run back where it came [fol. 532] from.

Q. I would like for you to take your map, Exhibit "A," which has your name on it, has it not?

A. Yes, sir.

Q. L. W. Duffee?

A. Yes, sir.

Q. You have a scale there for an inch to a mile?

A. Yes, sir.

Q. Will you take this scale and scale the distance from the point of junction to Pearson along the A. & V. Railroad?

A. It scales on this map about three miles, but I want to say in compiling this map that it was compiled practically from an existing map. I did not myself locate the actual point of Pearson, the name written on the map and the point may be slightly different.

Q. You stated yesterday that it was compiled from maps which you believed to be correct?

A. I believed to be correct. All maps, I find have defects in them.

Q. After scaling your own map you find the distance from junction point to Pearson to be three miles. What have you to say regarding your statement yesterday that it was approximately six miles?

A. Because I said I didn't know yesterday. I thought it was about that.

Q. Isn't it a fact and don't you know that it is not six miles from that junction point to Pearson?

A. After looking at the map I don't think so.
[fol. 533] Q. You don't think it is six miles?

A. No, sir.

Q. How far do you think it is since you looked at the map?

A. Between three and four miles.

Q. You said that if you went to Pearson there would be a continuous addition to your operating expense. You have never been an operating man, have you?

A. I have never held the title of an operating officer.

Q. Then explain what you mean by saying that there would be an increase in the operating expense?

A. Because I know that it would.

Q. Upon what do you base your statement?

A. From my experience and association with officers that do know.

Q. I am not talking about your opinion, what are the elements of expense, the roads there appear to be approximately the same distance?

A. I am not prepared to say as to that, without surveying the line, to avoid the hills and put in curves, there would be more heavy work and more distance, and more distance means more expense.

Q. You have not made this survey?

A. No.

Q. Your statement was made on general information without having studied the point?

A. I didn't consider it. We went to the nearest point.

Q. You went to the nearest point to what?

[fol. 534] A. To the nearest practical point of junction with the A. & V.

Q. If you were simply getting to the nearest point of junction with the A. & V. from Sebastopol you would have gone due south?

A. We didn't want to go through that territory, and we couldn't very well build the railroad through those hills. The A. & V. didn't build theirs through them.

Q. What hills are you speaking of?

A. All those hills between the A. & V. and this switch.

Q. I see a river here, or a creek, coming down, Tuscameta Creek, coming down to the A. & V. to your line at Sebastopol?

A. I am not familiar with the map, but we would be unable to get a railroad through there.

Q. Do you mean to say to this Court that from Sebastopol that the only place, the only line whereby you could build a road to reach the A. & V. Railroad was to come from Sebastopol by the route selected to this proposed junction point at Curran's Crossing?

A. No.

Q. You could have come 100 different ways?

A. Not a line that we wanted.

Q. You wanted this line?

A. Yes, sir.

Q. It is more or less expensive to maintain a railroad embankment within reach of flood waters?

A. Yes, sir.

Q. More or less?

A. It is more or less. I mean by that that it is usually more to a more or less extent.

[fol. 535] Q. What kind of embankment are you proposing to put there, dirt?

A. Yes, sir.

Q. A dirt embankment is expensive during high water?

A. If it is not sodded and effectively protected.

Q. If that embankment and connection is put there wouldn't the high water of the river increase the maintenance cost of that embankment?

A. My observation of a connection by water they do not suffer to a great extent as part of the wash out.

Q. It is more dangerous because part of the way it is washed down?

A. Yes, sir.

Q. In case part of the way it is washed down, does that increase the maintenance cost of the embankment?

A. Yes, sir.

Q. So that if you had an option of going down into flood range and staying out of a flood range, you would stay out of the flood range?

A. Yes, sir.

Q. Did you ever operate a train regularly?

A. How do you mean?

Q. Did you ever sit in the caboose and run a train regularly, or run a train regularly as an engineer?

A. No.

Q. Did you ever hold any position as a regular member of a train crew?

A. No, sir.

Q. You were never a switchman or brakeman?

[fol. 536] A. No, sir, I have done each, but never been a regular member of a crew.

Q. When you have a junction of two lines which are on a dump and the switchman and other members of the train crew, have some switching to do at that junction, how do they get from one dump to the other one, do they walk upon the "Y"?

A. They usually fill in a solid walk from one to the other.

Q. Why is that?

A. For the reason that they are unable to do their work quicker and safer. Sometimes a wide platform is put there, but it is usually filled in.

Q. What do you mean by super elevation?

A. Super elevation is raising the outer rail on a curve higher than the other one to protect the centrifugal force of the train going around it.

Q. Which track of the A. & V. is super elevated at this point?

A. The outer rail.

Q. Is that the one nearest the Jackson & Eastern or further away?

A. Nearest.

Q. Which rail of the Jackson & Eastern will be super elevated when it gets on the fill, the outer rail or inner rail?

A. Up to the point of clearance of the track the inner rail of the Jackson & Eastern will evidently conform to the plan of the A. & V. so that the one nearest the track would probably be kept elevated.

Q. Then the Jackson & Eastern track for a short distance at the [fol. 537] point of intersection will be built with the outside rail of its curve depressed instead of superelevated?

A. For a short distance, yes, sir.

Q. Does the change in that plan increase or diminish the chance of de-railment on that track?

A. At high speed it would have a tendency to derail, but switching is not done at high speed, but at low speed and that would have little effect on it.

Q. Who did you say you proposed to do the handling of the cars over this track if it is constructed in this manner, the J. & E. operatives or the A. & V. operatives?

A. I don't recall that I testified. My understanding is that the A. & V. will do the switching.

Q. And what risk there was would be on the A. & V. and not on the J. & E. crew?

A. Presumably so, yes, sir.

Q. Certainly so if they do the switching?

Mr. Stone: We object to him arguing with the witness.

The Court: I sustain the objection.

Q. Your counsel has had a good deal to say here about proposed interchange tracks. Have you any plans for interchange tracks?

A. We have them in mind. I have never personally made any plans.

Q. You hav-n't drawn any?

A. I have not.

Q. Has anybody drawn any that you have seen?

A. I hav-n't seen any myself.

Q. You have seen all the plans that have been drawn in connection [fol. 538] with this junction?

A. I don't know that I have. I haven't handled the entire work.

Q. I wish you would tell me where the interchange tracks are proposed to be located?

A. I don't know where they are proposed to be. Some of the

things I don't know about, but they would in reason be right off the A. & V. property.

Q. Where would they be with reference to the trestle on the Jackson & Eastern?

A. They might be on the trestle a little and build a double track trestle along side of it.

Q. Tell me where would be the nearest point to the point of switch to the beginning and end of the proposed interchange track?

A. I wouldn't attempt to answer that, without fully studying the situation.

Q. Do you mean to tell the Court that you hav-n't given any serious consideration to this interchange track?

A. I have given it such consideration that I know it can be done.

Q. You have no plans to produce or submit?

A. I hav-n't personally.

Q. Approximately, how far on the Jackson & Eastern track would you want these interchange tracks to come?

A. They would come as reasonably close to the junction as we could allow for switching.

Q. I am talking about in terms of feet and inches?

A. I wouldn't attempt to answer that for the reasons just stated.
[fol. 539] Q. And whatever distance a locomotive had to travel out there to make this proposed interchange would be traveled by whose locomotive?

A. The A. & V.'s. I will say this, that these plans would not be perfected and carried out until the A. & V.'s proper officials had been consulted and met with their satisfaction.

Q. They have never been consulted so far?

A. I don't know about that.

Q. How long had that track ought to be including the clearance?

A. It should be long enough to hold the longest possible train of cars that the Jackson & Eastern might wish to deliver to the A. & V. and vice versa.

Q. Tell me in feet and inches?

A. I would say probably 150 feet or 200 feet.

Q. Now, explain to this Court how you have in mind that that interchange would be made by an A. & V. through train coming up there from the west, just going through mind you, tell the Court what you want the A. & V. to do?

A. There would be used two tracks there, the main line track might be used and one side track.

Q. Where would the side track be?

A. On the side of the main line.

Q. On which side of the main line, designate?

A. There would be one for receiving and one for a delivering track and when the Jackson & Eastern locomotive, for instance, with trains coming in with cars to deliver to the A. & V.

Q. Let us suppose the track next to the A. & V. there is the receiving track and these cars are placed on that track, what would the [fol. 540] Jackson & Eastern locomotive do to place the cars?

A. They would pull up there to the switch and place them.

Q. How would they get out? Suppose there was a locomotive front of the cars on the A. & V.?

A. They would pull up to the clearance point or derail as close as they could get to it and back the cars into this switch and leave them in the side track.

Q. That would mean that you would have the full length of the locomotive, tender and cut of cars between the derail, the point which you spoke of and the switch?

A. Yes, sir.

Q. How would the A. & V. pick them up?

A. The A. & V. would go there and look over and see the cars on this receiving track and they would go out there——

Q. What distance?

A. They would go out to the nearest derail on the train.

Q. How far would they have to go?

A. Go the distance of the switch whatever it is.

Q. If you have a train coming out of Jackson, from the west coming east, and it comes into this switch what does it do?

A. Assuming the train is coming east?

Q. Yes?

A. He would cut off his cars from his engine back here.

Q. At the point of the culvert?

A. I don't know.

Q. There are two trestles?

A. He would stop his train somewhere leaving this crossing clear.

Q. If he left the crossing clear where would his train be with [fol. 541] reference to the trestles?

A. If it was a long enough train it might stand on the trestle a little, if it was a short train it would be clear of the trestle.

Q. What would he do next?

A. Close the derail so he could go through it and come on down to the lower end of the switch——

Q. And you fixed that at about 200 feet?

A. Whatever it was. And picked up the string of cars and throw the switch on the main line and come on with them.

Q. Where would he have left his train, the head of his train?

A. Far enough down the A. & V. line to permit him to put on these cars.

Q. On the front end of the train?

A. Yes, sir.

Q. So that the A. & V. locomotive in that operation would have gone between one and two miles, wouldn't it?

A. Yes, between one and two miles, that would vary *would* local trains. The switch engine out from the yard would have no difficulty in coming out there and pulling them into the yard.

Q. How long would it take for a switch engine to go between one and two miles and throw the switch and go through the movements you have indicated?

A. I think that 30 minutes would be fair time for it.

Q. How long?

A. 30 minutes.

Q. Suppose that you found in the course of your operations that you had a bad order car in the middle of the cut, what would you do then?

[fol. 542] A. It would probably be switched out to the rear end of the train so it could be left there. A train going east found a bad order car would leave it there.

Q. Do you mean that any trains picking up a bad order car would not be violating the rules of the interstate commerce?

A. I said they would leave it there.

Q. You said going east they would leave it there?

A. It would be the same thing.

Q. It would make no difference whether it was going east or west?

A. So far as the bad order car is concerned.

Q. In the operations you have described in detail, what additional movement would the locomotive have to make in order to sort out a bad order car?

A. It would have to cut that car off where it joined the rest of the train and set it out on a third track which would be build for such purposes as that.

Q. Would all those tracks be built on fills?

A. Yes, sir.

Q. And across a trestle?

A. Not necessarily.

Q. You said, I believe, that switching over a highway crossing adds a danger to that crossing?

A. There is an element of danger, yes.

Q. Well, how do you reconcile that with the suggestion you made here yesterday, that putting the junction here would make Curran's Crossing safer?

A. There is an element of danger there where there is a switch there or not, and in case there is switching there the trains would [fol. 543] have to come to a stop, at least, and that would better prevent the hitting of traffic.

Q. You stated that there would be no effect on through trains, whatever, didn't you?

A. I believe I did say that, there would be no change so far as the through trains were concerned.

Q. So the effect that it would have on the trains that stopped there to do switching would be an increase of danger?

A. I don't think there would be any increase, not enough to consider one way or the other.

Q. Would there be any additional duty on the locomotive engineer in case this junction was located here, in regard to look outs?

A. Yes, he would have to watch the signals more closely.

Q. Let us suppose, Mr. Duffe, that the engineer passes the block signal on the A. & V. to the east and found it clear on through to Curran's Crossing, and suppose that after he got by the block signal a locomotive which had been switched on this J. & E. moved out on the main line, what would there be to prevent a collision except the vigilance of the engineer?

A. The switch crew would have a flagman there and if the engineer watched like he should he would see the flagman.

Q. So the safety of his train and the safety of the switch crew would depend entirely on the vigilance of the engineer under the circumstances I detailed?

A. Yes, as much as any train is.

Q. He would pass the block signal that he would be depending on?

[fol. 544] A. Unless the A. & V. would change their signal system so a train switching in there so they would tell when there was a switch on there.

Q. Unless the A. & V. would revise and change their signal system the safety of these trains would be reduced to the dependency of the vigilance of the engineer and fireman?

A. And the switchman who is supposed to be on the look out.

Q. Does it do any good for the switchman to be vigilant if the engineer is not watching?

A. In all railroading that have the block signals the safety depends on the vigilance of the engineer.

Q. Are you a block signal engineer?

A. No, sir, but I have observed them.

Q. Are there any block signals on the G. M. & N.?

A. They haven't the regular block signal system like the A. & V.

Q. Has the M. & M. the block signal system?

A. No, sir.

Q. Has the J. & E. the block signal system?

A. No, sir.

Q. How long is the Bay Shore and Ft. Morgan Railroad?

A. It is a branch of the L. & N.

Q. About how long is the branch?

A. About 40 miles.

Q. Do they have the block signal system?

A. They didn't when I left.

Q. When did you leave there?

A. I gave you the date there.

Q. I don't happen to have it down?

[fol. 545] A. About 19 years ago.

Q. Therefore for 19 years you never worked for a railroad that had the block signal system?

A. I have studied it.

Q. I asked you yesterday if you were being paid to testify here by the Jackson & Eastern and you said that you supposed so, that you would be paid for your service, have you any definite contract?

A. No.

Q. For what railroad have you done railroad work since you began as an independant engineer a couple of years ago?

A. Well, I hav-n't done very much railroad work. I located this line for the Jackson & Eastern, part of this line, and I have done a few odd jobs for the G., M. & N.

Q. What is the total milcage of the G., M. & N. system?

A. Including the branches?

Q. Yes, what is its length at present?

A. About 460 miles.

Q. How much of that is main line?

A. About 408 miles.

Q. What branches are you counting?

A. The Blodgett Branch, about six miles and about 33 miles of the M. & M.

Q. Who succeeded you as chief engineer of the G., M. & N.?

A. The office didn't have any direct successor, they changed the system entirely, the title remained, but not the duties at all. It was a different organization, but H. S. Jones, he was the man.

[fol. 546] Q. Did you leave voluntarily?

A. Yes, sir.

Q. What is a register box?

A. A register box is what is usually called a register booth, it is a little closet about big enough for a man to get in, and has a book and pencil in it for the train men to go in at a junction point, and they stop and register the time they leave the main line, and register again when they get back.

Q. Does it make any difference whether the junction is between two branches of the same road?

A. If they are different roads, not operated as part of the same road continuously, I would think it would make no difference.

Q. You would have to have a register station?

A. I think so.

Q. In other words, whenever trains come to two branches, or one branch, there must be a register station?

A. Should be, yes, sir.

Q. Does that take time?

A. It takes a very small amount of time.

Q. What proportion of the trains stop at a register box to register?

A. On small roads they all stop, but on large roads, I don't know.

Q. Then that would put additional time into the schedule of every train passing that point if there was a register station established there?

A. You would have to add a few minutes to it.

Q. It would take time enough for the engineer to get off of his locomotive and walk over to the booth and examine the book to find [fol. 547] what trains had and had not passed and sign his name, and the time of arrival and departure?

A. The conductor usually does that.

Q. That takes three or four minutes at the minimum?

A. I think three minutes would be the maximum.

Q. Three should be the maximum?

A. Three, if they worked quickly.

Q. Do they work quickly?

A. I think they do, I have seen them.

Q. Now, you suggested yesterday in answer to your counsel that if a train, a freight train stopped it would stop with its cars that it wanted to take off the train off the trestle in the vicinity of this junction. Why would it have to stop the cars off the trestle?

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A. So the brakeman could get on firm ground, to make his coupling and uncoupling easier.

Q. Suppose a freight train stops with the rear end of the caboose back behind that upon the trestle, the conductor rides on the caboose?

A. Customarily.

Q. What would he have to do in regard to the trestle?

A. If he had to get to the front of the train he would have to go along side of the train, and if that had to be done they would likely construct a path way on the trestles.

Q. If a path was constructed on the trestles at whose expense will it have to be?

A. That is a matter to be adjudicated between the two roads.

Q. Have you heard of any walkway on these trestles?

[fol. 548] Mr. Stone: We object to what he has heard.

A. No.

Q. Your experience is not broad enough for that?

A. I have never heard of any, don't recall any.

Q. Would these trestles there cause any delay in this matter?

A. Not materially.

Q. In locating this junction point—you testified that in making the inspection out there the other day that no trains passed on this piece of track?

A. I said that I didn't see any.

Q. You were not where you could see the track the whole time you were out there?

A. I don't think I got out of sight of it. Yes, there was a period which I didn't see it, when we went up the Fannin Road.

Q. You are not prepared to testify that regularly scheduled train didn't pass there during the time we were out there?

A. I testified that I didn't see any.

Q. Part of the time you were way up the Fannin Road and part of the time you were eating your lunch, were you not?

A. The time I was speaking of was the time before I left there for lunch.

Q. Do you know what time 51 is due at Jackson?

A. No, sir.

Q. Do you know what time it went over that track at that connection?

A. No, sir.

Q. You don't propose to swear that no train passed there during [fol. 549] that period?

A. No, sir.

Q. Do you know how long normally 51 occupies that track?

A. No, I don't know what train 51 is.

Q. Something has been said here concerning the derail on this track, where is that derail, on the Jackson & Eastern track?

A. On the J. & E. track.

Q. Who does the derail belong to the Jackson & Eastern or the A. & V.?

A. These things are usually put in by the junior company, which would be the Jackson & Eastern, and would be operated by the A. & V.

Q. The ownership would be in the Jackson & Eastern, of the de-rail?

A. Not necessarily. They would probably pay for it and make a deed to it to the A. & V.

Q. The condemnation proceedings propose that it be 100 feet from the A. & V. track, doesn't it?

A. I am not sure on that point.

Q. Let us get sure on it. Here is the condemnation proceedings. I wish you would look at it and tell me if it says anything about that, anything about the location of the de-rail?

A. To be placed on the rail of the applicant at a point 100 feet of the point.

Q. That is on the Jackson & Eastern property?

A. Yes, sir.

Q. Does it say anything about deeding the de rail to the A. & V.?

A. No. I don't see any reason for putting that in there.

[fol. 550] Q. Does it say anything at all about the derail belonging to the A. & V.?

A. I don't see anything in there about it.

Q. If the derail is owned by the A. & V. or if it is owned by the J. & E. will all the appertances of the derail belong to the Jackson & Eastern or to the A. & V.?

Mr. Stone: We submit that is a legal question.

Q. All right. Suppose, Mr. Duffee, an A. & V. train comes to this junction from the east, coming from the direction of Meridian and stops at that switch, where will it stop relative to the main line of the A. & V. Railroad?

A. On the main line of it.

Q. With regard to the A. & V. main line?

A. It will be on the main line.

Q. If the train stops on the main line, what is the duty of the flagman?

A. Of the flagman?

Q. Yes?

A. To go out and protect his train.

Q. How will he protect it?

A. Under Rule 99. I think that is the number.

Q. Will you read that into the record, please?

A. (Witness reads:) "Rule No. 99. Protection of trains by signals. When a train stops or is delayed under circumstances in which it may be overtaken by another train, the flagman must immediately go back with stop signals to stop any train moving in the same direction. At a point one-half of a mile from the rear of his train he must place one torpedo on rail on engineman's side. He must then [fol. 551] continue to go back at least three-fourths of a mile from the rear of his train and place two torpedoes on the rail, on engineman's side, not more than 60 feet apart, when he may return to the

point one-half of a mile from the rear of his train, and he must remain there until recalled, but if a passenger train is due he must remain until it arrives. When he comes in he will remove the torpedo nearest the train, and if at night or during stormy or foggy weather, will, in addition, display a red fusee, but the two torpedoes must be left on the rail as a caution signal to any following trains. Between sunset and sunrise, or during foggy or stormy weather, the flagman shall immediately after he leaves his train, light a red fusee and carry it with him to the point where he places the first torpedo, and must leave the burning fusee at the same point. Under no circumstances will a flagman allow a train which he must stop to pass him without having placed one torpedo on the rail on engineman's side.

If a flagman is recalled before reaching the required distance he will place two torpedoes on the rail on the engineman's side to protect his train while returning, and if at night or during stormy or foggy weather will in addition display a red fusee.

By night, and during stormy or foggy weather by day, under any conditions which make it necessary to protect the rear of a train while running, lighted red or yellow fuses must be thrown on the track at sufficient intervals to insure full protection.

The recall of flagman is the most critical period and when there is not a clear view of at least one-half mile, the train must be moved forward a sufficient distance to insure safety before flagman is recalled. During foggy or stormy weather or in the *in the vicinity* [fol. 552] of obscure curves or descending grades or when other conditions require it, the flagman must go as much further than the distance named above as will insure absolute safety, placing the torpedoes at relatively greater distances from the train.

When a train is flagged by a flagman, engineman must obtain a thorough explanation of the cause, stopping if necessary.

If the delay occurs on a single track and it becomes necessary to protect the front of train, or if any other track is obstructed the front brakeman must go forward and use the same precautions. If the front brakeman is unable to leave the train the foreman or baggage-master must be sent in his place.

When a flagman is sent out with specific instructions affecting the rights of trains, such instructions must be in writing.

When a flagman is sent to a station on a train he will ride on the engine and engineman must stop and let him off at the first switch."

Q. You have just read Rule 99, and that says that the flagman must go back a total distance of $\frac{3}{4}$ of a mile?

Mr. Stone: We object, he has the rule read into the evidence.

The Court: I sustain the objection.

Q. How long will it take a flagman to go back $\frac{3}{4}$ of a mile?

A. He don't have to go back unless there is another train coming that has to be protected.

Q. Do you mean to tell the Court that when a train stops on the main line that under Rule 99 the flagman doesn't have to go back?

A. When a train stops or is delayed under circumstances in which it may be overtaken by another train.

[fol. 553] Q. What do you say?

A. The trains are all scheduled, they know what is coming.

Q. You mean then to base your statement on the presumption that all of the A. & V. trains are scheduled? Do you know whether all of the A. & V. trains are scheduled or not?

A. No.

Q. Don't you know it is a fact that they are not all scheduled?

A. I don't know that.

Q. Now, answer me this question, how long will it take a flagman to go back three-quarters of a mile and come back?

A. About 20 minutes if he comes straight back.

Q. Does your proposed line go through Lucknow?

A. It goes through what is called Lucknow, but it is no more than a little store or church. Lucknow has been changed.

Q. Look on this geological survey map and give the elevation between—do you find it there?

A. Yes, sir.

Q. What is the elevation of Lucknow?

A. 302 is what it is given here, that is the nearest to Lucknow.

Q. Will you look again and give exactly what it is at Lucknow on the map?

A. I couldn't the figures are not there.

Q. What is it given on the map?

A. 379, that is simply a cross roads near Lucknow.

Q. Lucknow is marked 302 feet?

A. Yes, sir.

Q. How much higher is that 302 feet than the elevation of the [fol. 554] concrete road where you are going to cross it at grade?

A. The elevation shows there as 266 and that from 302 feet would be 33 feet.

Q. What is the highest line shown on this Government map along the line that you drew in red yesterday, please?

A. The red line as drawn was drawn following the contour lines approximately following the line on the Government topographical sheet, and has an elevation of 280 feet.

Q. 290 feet which you say that red line shows is 20 feet lower than the elevation you propose to reach at Lucknow, new Lucknow?

A. Yes, but it must be born- in mind that the map only shows an elevation every 20 feet. No elevation between that is shown, if it is 18 feet higher in there it is not shown until the next 20 feet.

Q. You made no detailed survey down the red line?

A. No, sir.

Q. Will you take this Exhibit "A" attached to the petition, please, and lay off on it the property which is described in the condemnation suit here sought to be enjoined?

A. (Witness takes map.)

Q. Have you laid it off?

A. I have.

Q. Will you color it now in red pencil?

A. I will do so.

Q. Will you sign your initials below where you crossed that?

A. I will.

Q. You put your initials "L. W. D." next to the cross that you made there?

A. Yes, sir.

[fol. 555] Q. That is within the limits of the right of way of the A. & V.?

A. Yes, sir.

Redirect examination by Mr. Stone, for the defendant:

Q. Mr. Duffee, you were asked a good many question- about the control of this de-rail switch, and whether it would be controlled by the A. & V. or the J. & E. Railroad. I will ask you to state what you know, if anything, of the customs prevailing with reference to that, which one controls the de-rail, the junior line or the senior line?

A. The senior line, and in this case the A. & V. Railroad.

Q. Now, this de-rail switch was mentioned as being 100 feet, what is it 100 feet from, look at the map?

A. 100 feet from the point of the frog, where they are to turn.

Q. Would that or not leave it on the right of way of the A. & V. I don't mean their train, I mean their right of way?

A. Yes, sir, it will still be on their right of way.

Q. You were asked a good many questions about the register box. I will ask you to state to the Court whether or not if this is simply a switch connection for their interchange of traffic a register box would be necessary?

A. No, sir.

Q. You were also asked at length if the safety of the train crew wouldn't depend on the vigilance of the engineer approaching this switch. I will ask you to state to the Court whether or not that will be true regardless of where the switch is made, at this point or any other point?

A. It will be the same thing.

Q. You were also asked about the rule book for trains that had [fol. 556] to stop and do switching and you read the rule relative to flagmen who had to go back, and about their signals and signs, state whether the same thing would occur if this switch was made at any point between this and Pearson?

A. Yes, sir.

Q. Would that be the same whether it was on a curve or on a tangent?

A. The same thing.

Q. You were also asked to give the lengths of the lines of the interchange tracks, and the necessary interchange tracks, and you mentioned one as being 2,000 feet. Does this particular location have anything to do with the length of the track?

A. No, sir, it would be the same any where.

Q. Now, you were asked the question by Mr. Monroe, if the change in the elevation of your outside rail, the outside rail of the Jackson & Eastern in this switch track in lowering it and putting it on an elevation to make it conform to the A. & V. wouldn't be dangerous in running trains as a switch track in switching cars to the Jackson

& Eastern and switching cars from the A. & V. State to his Honor whether or not it would be dangerous to use it as a switch track?

A. It would not.

Q. I believe I asked you yesterday whether this would change the elevation of the A. & V. track at all or not?

A. It would not.

Q. Mr. Monroe also asked you if it wouldn't be better for the switch connection to be on the inside of the curve, less dangerous. I will ask you if you are familiar with the switch at Pearson?

[fol. 557] A. Somewhat. I have noticed it in passing.

Mr. Monroe: We object, he says that he is somewhat familiar with it.

The Court: I overrule your objections.

Mr. Monroe: We except to the ruling of the Court.

Q. Which side is it on?

A. On the outside.

Q. And you were also asked quite a good deal about the interchange of passengers. Do you know whether or not there is anything about that in this application, whether anything like that was sought?

A. I never saw anything in the application about it.

Q. Do you know whether or not the A. & V. expects to build a depot there?

A. The A. & V.?

Q. Yes?

A. No, sir.

Q. He further asked you about stopping passenger trains here. I will ask you to state to His Honor whether this switch connection for the interchange of cars between these two railroads would have anything to do with the stopping of passenger trains there, and if so what?

Mr. Monroe: We object to that.

Mr. Stone: I mean the operations, would it necessitate the stopping of passenger trains in the interchange of freight cars.

The Court: Your question is simply based on the fact that you only want to interchange freight?

Mr. Stone: Yes.

The Court: I will let him answer.

Mr. Monroe: We except to the ruling of the Court.

[fol. 558] Witness: It would have no effect on the passenger trains.

Q. Would it have any effect on any kind of trains that didn't stop there?

Mr. Monroe: We object.

Q. If so what?

The Court: I think that is leading.

Q. What effect, if any, would it have on train unless that train was going to stop there to do some switching?

A. No effect that I know of.

Q. You were also asked about the pressure of these flanges against the rails. Would a connection of this switch at that point cause the flanges to press any harder?

A. No, sir.

Q. You were also asked about the breaking off *the* the points, I want you to state to the Court whether or not there would be any difference between switching at this point and any other point on a curve with respect to breaking any points?

A. No difference.

Q. Take the curve at Pearson and down here at Chunky, if they break off the point of the switch what has to be done?

A. The switch point will have to be renewed.

Q. Does this particular location have anything to do with that?

A. No, sir, it would happen anywhere.

Q. You were also asked about the amount of ballast that was going to be used there. I will ask you to state if you know how much is going to be used there, as a matter of fact?

A. I wouldn't undertake to say how much they are going to use.

Q. Are you familiar with that part of the Jackson & Eastern where [fol. 559] trains are running?

A. Yes, sir.

Q. Where they have been running for some time?

A. Yes, sir.

Q. How much ballast is put on that part of the road?

A. Not very much.

Q. Mr. Duffee, Mr. Monroe asked you if after developments were to show that the embankment you had thrown up there was not sufficiently high to protect itself against the water, what would you do, and you said that you would probably raise it. I will ask you if after developments should require it you would change the openings?

A. If the openings were not sufficient and it was an advantage to the road they would probably do it. I may add that that has been done in nearly every railroad that has been built.

Q. You were asked quite a good many questions as to why you didn't run from Sebastopol to Pearson, and you spoke of some hills in there. I will ask you to state to the Court whether or not Pearson is where the road is expected to go, if not where do they expect to go?

A. Pearson was never mentioned, we were going towards Jackson.

Q. Towards Jackson?

A. Yes, sir.

Q. You said that you never made any particular survey of that going south down towards Pearson. Have you from the geological map any information touching those hills in there?

A. From observation both in going by there and traveling over parts of it.

[fol. 560] Q. When you said that you made no survey of it, I will ask you to explain to the Court what you mean by that, whether you meant an instrument survey?

A. I made a survey with the eye, what is known as reconnaissance, but I did not make an instrument survey.

Q. When you made that survey, state to the Court what you have

to say with respect to the convenience of running that line of railroad to Jackson by Pearson?

Mr. Monroe: We object, he has not laid the proper foundation. He said he never made any survey of it.

The Court: Are you speaking of the territory from Sebastopol to Lucknow?

Mr. Stone: I am speaking of the territory north of Pearson.

The Court: Have you seen those hills?

A. I have seen them.

By Mr. Stone:

Q. Now, from what you have seen of *this* hills state to the Court what you have to say with respect to suitability of running a railroad to Pearson?

Mr. Monroe: We object.

The Court: I suppose he can answer that, so I overrule your objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Answer the question?

A. They would be unsuitable, and I don't have to run an instrument over them to see it. My experience is sufficient to know that it is out of the question for our railroad when we see these hills in our way.

Q. From the height of it and the general character of the elevation [fol. 561], state to the Court whether or not it is necessary to make an instrument survey to determine whether it is suitable or unsuitable for a railroad right of way?

A. I think as a competent locating engineer that it would be a waste of time to run a line over these hills.

Recross-examination by Mr. Monroe, for the complainant:

Q. I want to ask you one question, did you walk over the place where the high ground meets Pearl River Valley on the east?

A. No.

Q. You made no survey of it?

A. No instrument survey.

Q. When you were looking at it you were looking at them from the A. & V. Railway and from the Jackson & Eastern territory?

A. That, and I had occasion to go over the concrete highway and other roads in that vicinity. I was traveling in automobiles, buggies, etc.

Q. You said that this danger from a switch point on the outside of a curve might happen at any point. You mean any point with the same curve and the same switching conditions?

A. Yes, sir, when no switching is being done, it would have no effect on it one way or the other.

(Witness excused.)

Court: We will adjourn for noon, meeting at 2 o'clock.

[fol. 562] COLLOQUY BETWEEN COURT AND COUNSEL

Court having been called for the afternoon session, the following proceedings were had, to-wit:

Judge Thompson: We ask leave of the Court to make a slight amendment to the bill of complaint.

Mr. Neville: We think it is too late at this time.

The Court: I don't think it is too late, but I will hear your objections, Mr. Neville.

Mr. Neville: Now, comes the Defendant, the Jackson & Eastern Railway Company, and excepts to the ruling of the Court in allowing the amendment, for the reason that the facts set up in the said amendment are wholly immaterial to the issue in this case, that the statute giving the defendant the right to condemn the switch connection doesn't limit such right to the railroads operating trains to the point of junction where the switch connection is sought at the time of the condemnation proceedings.

The Court: I overrule your objections.

Mr. Neville: We except to the ruling of the Court.

[fol. 563] P. L. STACKER, having been called and duly sworn, testified as follows for and on behalf of the defendant, to-wit:

Direct examination by Mr. Stone, for the defendant:

Q. Give us your name, present place of residence and occupation?

A. P. L. Stacker, Eutawville, S. C., business, civil engineer.

Q. You say that you are a civil engineer?

A. Yes, sir.

Q. Are you a railroad civil engineer?

A. Yes, sir.

Q. Mr. Stacker, are you a graduate of any school of civil engineering?

A. Yes, sir.

Q. Please state what school and what course you graduated in?

A. University of the South, Civil engineering.

Q. Did you state what course?

A. Civil engineering course.

Q. Are you a graduate of that school?

A. Yes.

Q. When were you graduated from that school?

A. 1897.

Q. Since your graduation I wish you would state to the Court what practical experience you have had as civil engineer in railroad work, first in construction work?

A. With the exception of approximately four years, when I was in service in the Army, I have been in railroad work all of the time since 1900.

Q. What railroads have you worked for?

[fol. 564] A. The first railroad I worked for was the L. & N. as rod man, afterwards as instrument man and transient man, on location of the C. & P. Branch.

In 1898 I went into the voluntary army, the state militia of Tennessee and stayed in the Army until September, 1899. From September 1899 until April 1900 I did practically no engineering work. In April 1900 I was employed by the Old Plant System as assistant engineer.

Q. By what?

A. By the Old Plant System, afterwards bought by the Atlantic Coast Line and now a part of it. I served as assistant engineer of maintenance and way as section laborer, section foreman and track supervisor until September 1902. In September 1902 I entered a contract.

Q. What kind of contract?

A. Railroad contract. I was employed by the company and did contract work myself until the early part of 1903, the late spring or early summer.

Q. You say that you were employed by them, what was the nature of your employment?

A. Engineer for Oliver, W. J. Oliver, and did superintendent work on the Mississippi Central.

Q. Go ahead?

A. I was employed by the A. B. & A. immediately after I left Oliver, at Brunswick as residence engineer of maintenance way. In 1904, I am not sure about the time, whether it was in September or October I left the A. B. & A. and went to the Georgia, Florida and Alabama Railway where I had charge of the location and construction of branch lines of the Georgia, Florida and Alabama. In February 1906 I was employed by the Gainsborough-Middleton in re-constructing a narrow gauge road from Gainsborough, and built a new line of 18 miles, standard gauge road. Then I worked for the Athens Terminal Company and continued to work for them until February 1908, as resident engineer. In March 1908 I went to Ainsley, Alabama with a steel corporation. I was employed as assistant superintendent and afterwards as engineer, and as assistant engineer of the Birmingham Southern. I left there in July, 1911.

In August or September, 1911 I was employed by the G. S. & A. electric line from Greenwood to Greenville, S. C. as resident engineer, until October, 1912. Between October, 1912 and the middle of January, 1913 I located a line from Rock Hill to Cahaba Junction, S. C. That covered part of the Air Line Railway. In January, 1913, I was employed by the Birmingham & Tuscaloosa Railway as Superintendent of construction in rebuilding an electric line from Tuscaloosa to Holt, Alabama. In 1913, in July, I did some work for the Georgia & Florida, made inspections of their buildings and trestles, and then went to North Carolina with a subsidiary of the Norfolk & Western as locating engineer and engineer in

charge of construction, and remained there until September or October, 1914.

Q. When did you go there?

A. Immediately after I left the Georgia & Florida, it was in August.

Q. Of what year?

A. 1913. In November, 1914, I went with the Interstate Commerce Commission as assistant field engineer and left the employ of the Interstate Commerce Commission in May, 1917. I then went in the engineer's corp- of the Army and remained there until May, 1919, between May, 1919 and October, or possibly November of 1919, I did some minor work.

Q. You said you were in the Army in the Engineer's Corp-, what work did you have to do?

A. In the transportation department under the control of the general of the military railway.

Q. While you were under the interstate commerce commission what did you do?

A. Took field inventories of the railroads. I had the Southern and L. & N. part of their lines.

Q. Well, did you have any other experience?

A. In November 1919, or possibly October, 1919, I am not sure, I went with the G. M. & N. as valuation engineer. In December, 1920, I was employed by the Jackson & Eastern, and I left the employment of the J. & E. in April, 1922. Since that time I have done no work in connection with railroads except railroads such as those used by saw mills, which are below the standard of common carriers. The work which I have done since that time has been land surveying and timber estimating.

Q. Mr. Stacker, during that period of experience, and also including your training in an engineering school, state what experience you have had of familiarizing yourself with the handling and moving of cars in the vicinity of yards and side track switching, and so on, how acquired, if you have any such knowledge?

[fol. 567] A. My knowledge was acquired through the familiarity with the conditions around the yards and in consultation with the men who were in charge of the operations of the road where such tracks and yards were to be built. It was necessary to consider these things in planning and constructing the yards.

Q. You say that it was necessary to consider these things?

A. Yes, sir.

Q. State to His Honor whether it became necessary for you to familiarize yourself with the methods and so on, used in handling cars, moving cars around yards, switches and so on?

A. It was.

Q. You say it was necessary for you to familiarize yourself?

A. I did.

Q. Did you have any experience in constructing yards?

A. Yes, sir.

Q. Did you have any experience in constructing interchange tracks for the interchange of cars from one road to another?

A. Yes.

Q. Did you have any experience in constructing switch connections, such as that sought in this proceeding?

A. Yes.

Q. Mr. Stacker, you say you were employed by the Jackson & Eastern, at what time?

A. From December, 1920, until April, 1922.

Q. To do what?

A. To locate and construct a line of railroad from Sebastopol to Jackson, Mississippi.

Q. Did your employment follow or precede that of Mr. Duffee?

[fol. 568] A. I was employed before Mr. Duffee was employed.

Q. Before?

A. Yes, sir.

Q. In your employment, did any of your employment extend after his employment?

A. Yes, sir, I continued with the work, after he finished the work he was employed to do.

Q. Were you both employed at the same time?

A. Yes, sir.

Q. What was your position?

A. I had the title of chief engineer.

Q. Are you or not familiar with the proposed line of railroad of the Jackson & Eastern from Sebastopol to the proposed point of Junction with the A. & V.?

A. I am.

Q. How did you get familiar with the conditions?

A. By personal inspection of the country along the route adjacent to the road.

Q. I want a clear idea of how you did it?

A. By walking over the country from Sebastopol to Jackson. I walked about 180 miles on the first trip, covering a distance of 62 miles.

Q. How come you to do that?

A. By walking back and forth across the strip of country. I afterwards walked across the country between Goshen Springs and Pelahatchie, a point on the A. & V. and along the west side of Tuskameta Creek to a point about half way from our line to the A. & V. I covered a strip through there that extended in a line [fol. 569] within three miles to the south and east of the location and in some place as far as 4 miles north and west, although not all the way on the west and north.

Q. What do you know of the territory lying north of Pearson?

A. Immediately north?

Q. Yes?

A. It is rough, broken and hilly country.

Q. What do you know of the country lying between Pearson and Lucknow?

A. There are the hills that I spoke of, which is north of Pearson. Further north in the river valley the country is low and subject to overflow. A very great part of it.

Q. Now, who actually laid out this line, surveyed it, you or Mr. Duffee?

A. Mr. Duffee was in charge of the location on that end, and actually supervised the running of the line, established the grade, the location and water ways.

Q. So your familiarity with the surrounding country both east and towards the river from the now proposed line—state what you have to say with respect to the line selected by Mr. Duffee as to its convenience and suitableness?

A. I see no reason to change the line in any respect. I consider it a satisfactory location.

Q. Something has been said in the testimony about a junction at Pearson. State to His Honor whether that would be a reasonable junction, bearing in mind the ultimate terminus of the road, and if not, why not?

Mr. Monroe: What do you mean by the ultimate terminus of the road?

[fol. 570] Mr. Stone: Jackson.

A. The junction at Pearson wouldn't have been suitable because it would have been a longer line that the Jackson & Eastern would have had to build, it would be off the route that the J. & E. contemplated handling their business over, and put them out of touch with the territory of the Jackson & Eastern.

Q. What business do you refer to?

A. The exchange of freight between the railroads.

Q. Mr. Stacker, you have been present during the trial of this case?

A. Yes, sir.

Q. You have heard the testimony on the part of the complainant touching the proposition of flooding and endangering the embankment of the A. & V. and its bridge across the River as a result of the construction of the Jackson & Eastern Railway embankment. I want you to tell the Court what you think about that as a civil engineer?

Mr. Monroe: We object to the question. That is for this Court to determine. He is asking him to decide the case.

Mr. Stone: Then I will change it a bit.

Q. What effect, if any, would the building of the dump of the Jackson & Eastern as now outlined, have upon the embankment and bridge and trestles of the A. & V. at the River, from the standpoint of throwing the water in there and endangering the A. & V. property?

A. The construction of the line as contemplated would not throw any additional water against any of the openings of the A. & V. [fol. 571] other than what they get there now. They would still get the same proportion of the water.

Q. What increase of the flow would there be, if any?

A. None.

Q. It is contended by them that the building of this railroad

will converge the waters and throw them in a tunnel which will endanger the A. & V. bridge. What is your opinion about that?

A. The water that would flow out of the River towards the east would follow the low country and would flow out over Hog Creek or Neely Bayou.

Q. Where is Hog Branch? How far north of where Fannin Road turns off the concrete road?

A. In the neighborhood of five miles.

Q. What size is Hog Creek?

A. Very much of the high water backs out over the low country and Neely Bayou, or McNeal, is the greatest water carrying stream. Then there is another branch, I think the name of it is Prairie, if there is another name, I have forgotten it. Those streams are natural depressions and they do not carry the water except during the pressing season, when the water passes over there and flows away through the J. & E. embankment, through the openings provided for the passage of the water.

Q. I want you to state to the Court whether the openings, if suitable openings have been left for the water to pass through at these natural depressions, in the embankment of the J. & E.?

A. At Hog Creek there is a 300 foot trestle, and between Hog Creek and the point where the Jackson & Eastern crosses the Concrete Road there is approximately 450 feet, total length of openings. [fol. 572] Q. What is the total?

A. From Hog Creek, approximately 450 feet. The water passing through these openings flow from that section lying east of the Jackson & Eastern right of way, then the water begins to flow towards the south and southwest. The concrete road lying east of the Jackson & Eastern is between the point of crossing of the J. & E. and the high ground. It is not subject to overflows. The total length of opening is less than 62 feet, and that holds the water from that area.

Q. What quantity of overflow water is carried in that area?

A. From ankle to knee deep before the flood stage shows on the north in front of Hurst's store at Curran's Crossing.

Q. Where is the deep water located before it shows on the north in front of Hurst's Store?

A. Over near the rise of the ground to the east of the Jackson & Eastern Railway, the whole tendency there of two and a half miles is to slope towards the east at right angles with the River, the River bank, and stays with the river bank almost continually excepts for the depressions, when it strikes them it goes through, where the ground is higher than it is two miles to the east, and there the water over-low from the river spreads out over the river bottom.

Q. Mr. Stacker, do you know the total openings in the concrete road and in the Fannin Road that permits the water to go under, beginning at Farish Bridge?

A. The total number of openings between Farish Bridge and the high ground to the east is from 112 to 115 feet.

Q. Beginning at Hog Creek and coming around to the point where [fol. 573] this proposed junction is, what is the total openings through the Jackson & Eastern?

A. Approximately 750 feet.

Q. 750 feet?

A. Yes, sir.

Q. Now, take the openings through the A. & V. to the east of this junction that would handle this water, what do the openings amount to?

A. I think there is 1,100 feet. There is a 400 foot trestle immediately east of the proposed junction, then there are two trestles of 150 feet each and another trestle that may be 300 or possibly 400 feet long.

Q. State to His Honor whether or not these trestles on the A. & V. have to carry off the water which does not go through the Jackson & Eastern?

A. There is water there that has to be taken care of that flows east of the Jackson & Eastern that does not pass through the Jackson & Eastern from the River.

Q. Do you know anything about the water from the hills back east?

A. There are drains that lie in a generally southwesterly direction. I don't mean running streams, but natural depressions. There is a creek, Conway Creek, the source of which lies in these hills. It goes in this general direction and crosses under the A. & V.

Q. From Hog Creek back around to this junction, state to His Honor what public highway runs between the Jackson & Eastern track and the River?

[fol. 574] Q. The Fannin Road. There are some other roads that are in there, but I am not sure that they are public highways. They may be settlements roads, I think they are. And if they are there is only one public road and that is the Fannin Road, commonly called the gravel road.

Q. What about the concrete road?

A. That lies between the A. & V. and the River, part of the concrete road.

Q. Now, Mr. Stacker, state to His Honor what consideration, if any, you have given to the drainage problem for carrying overflow waters through the Jackson & Eastern?

A. We have to consider the cost, and we are building our line above the high water, except as to periodical overflows. We have provided openings that will take care of the water in the area north of the crossing of the concrete road. Between the crossing of the concrete road and the connection with the A. & V. Railway, there were two openings left of one hundred feet each, and taking into consideration the probable result of the high water we deemed them ample to carry the water out of that space. The total openings between the connection with the A. & V. to the upper opening where the flood waters begin to back across the bottom on the east side of Pearl River makes about 1,050 feet. Under the A. & V. between that junction and the high ground we found approximately 1,100 feet. Before the water could reach the A. & V. in that area, there is the concrete road and the gravel road that would impede the flow of the water, and there is considerable area to the northeast which is drained through some openings of the A. & V. And we consider that there

is ample clearance of openings to take care of the balance of the [fol. 575] water so that it would not throw an appreciable elevation of water on either side of their embankment.

Q. What is your personal judgment touching the question of the dangers arising from the increase of the height of water as a result of the construction of the Jackson & Eastern Railway as proposed?

A. I don't think there would be any increase of danger to the A. & V.

Q. State whether or not you have given that careful consideration?

A. A good deal of consideration. Before I made the statement I considered it carefully.

Q. In view of the amount of openings under the respective railroads and the location and position of the Brandon Road what are your conclusion- as to openings?

A. We came to the conclusion that we had provided sufficient openings.

Q. You have heard the testimony of Mr. Wood, a civil engineer, and the testimony of other witnesses. Now, taking into consideration all that you have heard and all that you have seen, and from your experience, and state to His Honor, whether, in your judgment the openings are sufficient to carry off the water?

Mr. Monroe: We object to him passing on the testimony of any other witnesses.

The Court: He can't give his opinion as to their testimony. I overrule the objections, though, as to the other part of the question.

Mr. Monroe: We except to the ruling of the Court.

A. The testimony that I have heard has not changed my opinion [fol. 576] in the least. I don't think that the construction of the Jackson & Eastern embankment will increase the danger to the A. & V. Railway on account of flood waters.

Mr. Monroe: We move to strike the question and the answer from the record.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Mr. Stacker, did you attend a meeting of the State Railroad Commission at Jackson and the Interstate Railroad Commission when the question of the location of this road was under consideration?

Mr. Monroe: We object to that as being incompetent, irrelevant and immaterial.

The Court: I will have to find out what he wants, so I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. I will ask you to state to the Court whether or not all the matters touching the drainage and carrying for the water were gone into and the location of the line was gone into before these commissions?

Mr. Monroe: We object, they are both court records, and the contents of the records are the best evidence, and secondly, it is irrelevant and immaterial to this issue.

The Court: I think you are correct in regard to the record, so I will sustain the objection.

By Mr. Stone:

Q. I will ask you whether or not the testimony was taken down by the commissions?

[fol. 577] Mr. Monroe: We object.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Was the testimony taken down?

Mr. Monroe: We object.

A. There was.

Mr. Monroe: We move to strike out the question and the answer.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

The Court: But you will have to produce the records if you are going to question him along this line.

By Mr. Stone:

Q. Mr. Stacker, there is a further charge in the bill that the junction of this switch, this interchange switch at this point will cause the water to be impounded between the A. & V. line and the Jackson & Eastern line so as to endanger the A. & V. Railway Company's embankment, tracks and other property. What have you to say as to that?

A. I can't see that there would be any water impounded. It is not possible to impound the water between the tracks.

Q. You don't see that that is possible?

A. I see no possibility of it.

Q. Why?

A. Because the water between the tracks flows away from the connection of the two tracks and there would be no cause for the water to flow up hill in between the tracks.

Q. What has the Jackson & Eastern Railroad done to impede the [fol. 578] water after it passes through the openings in the J. & E. track to keep it from going on to its natural destination?

A. There is nothing been done by the Jackson & Eastern.

Q. There is a charge, also, that the construction of this dump as proposed and this junction would converge the waters in at Farish Bridge and increase the height of the water there so as to endanger the Farish Bridge and destroy the A. & V. trestle lying south of it. I want you to give the Court your opinion about that?

A. I don't think the construction of the J. & E. along the River will force any water to stay in the valley, in the channel between the embankment of the Jackson & Eastern and the River that would not be there anyhow. The big meanderings of Pearl River throws a strong current almost directly at Farish Bridge opening. The depression there was caused apparently by the track across that flat during the flood stages of the river and the bend that turns in there and still throws the flood water through that opening. So there would be probably as much but no higher water where the stream strikes the Farish Bridge.

Q. State whether or not the construction of the Jackson & Eastern would effect that?

A. It would have nothing to do with it. It would not change the direction of the flood water.

Q. Well, this road dump has been constructed there, how long?

A. The road dump?

Q. I am talking about the Jackson & Eastern?

A. It was built there, possibly in January or February, 1922.

[fol. 579] Q. Take that part of it there closest to the point where the junction or switch is to be located, as proposed to be made and the concrete road, how much of that has already been constructed, thrown up?

A. There is approximately a half mile that is built up to the concrete road.

Q. Take the balance of it, how much is that?

A. There is two or three hundred feet in there. I have no distinct recollection how much it is, but it is partially built.

Q. Do you know about the high waters they had there this year?

A. No, sir.

Q. Were there or not high waters there in 1922 when this construction was going on?

A. Yes.

Q. State to the Court whether or not you made any observations down there to ascertain whether or not the Jackson & Eastern had actually thrown the water back?

A. There was no apparent indication of it, that the water had left the mark which it had made long ago.

Q. Suppose that the water on the river side of the concrete road was from a foot to a foot and a half higher than it was on the other side of the concrete road, then what would you have to say about the Jackson & Eastern embankment having thrown the water back?

A. I would say that the concrete road was damming the water instead of the Jackson & Eastern.

Q. Could the Jackson & Eastern throw the water back as long as the water was higher on the river side of the concrete road than [fol. 580] on the other side of the concrete road?

A. It couldn't possibly do so.

Q. Something has been said about a switch connection back towards Pearson. Do you know any reason why the Jackson & Eastern would object to a connection back there, if so, state what it is?

A. If they built the connection at Pearson they would have to cross the flood water on lower ground than they actually cross it now, and they would have a greater distance to go, and if the line was thrown as far back as Pearson it would run into heavier construction.

Q. Heavier construction, what do you mean?

A. There are some hills sticking out at cross lines from Pearson to Drake's Church which would have to be gone through, or else there would be a long curve around these hills and turn back east again and running parallel with the A. & V. to reach Pearson.

Q. What would be the objection to that?

A. We would be headed in the wrong direction, headed away from the objective point of the road.

Q. Well, what effect would that have, if any, on the increased cost of construction?

A. The additional length would add to the cost, and the additional distance would add to the cost of operation. We figure the cost of operation on the number of miles and if we add any miles it will cost more.

Q. What about the cost of maintenance?

A. The maintenance is almost directly proportionate to the length of the line. Any increase in the length of the line increases the [fol. 581] maintenance.

Q. Now, after you have reviewed, as you said you did, that entire territory, state to His Honor what fault you find, if any with the location made by Mr. Duffee?

A. I couldn't find any fault with the location made by Mr. Duffee.

Q. If you should go to the additional expense of construction and of maintenance of operation, to make a switch connection with the A. & V. at or near Pearson, state to His Honor whether or not you will be on a curve?

A. It would be possible—

Q. Take it at Pearson?

A. It would be possible to get into Pearson on a tangent of the Jackson & Eastern, but as a connection it has never been considered. Pearson Station is located on a curve of the A. & V. If we cleared the A. & V. tracks that now exist at Pearson, west of the station there is a tangent and it might be possible to get on a tangent on their main line there.

Q. It might be possible?

A. I have made no investigations, but I think there is a tangent that we could approach there, but I didn't consider it.

Q. I will ask you to state to the Court whether or not the A. & V. at Pearson is on a curve, and if so, what degree of curve?

A. It is on a curve of approximately two degrees.

Q. Do you know where their switch connection is there?

A. I have a mental picture of the location at Pearson.

Q. Which side of the curve is it on, the inside or outside?

A. Both.

[fol. 582] Q. There is a switch on each side?

A. Yes, sir.

Q. From the standpoint of the water problem state to His Honor what objection you can see as a civil engineer, after all your investigations of the matter, to this junction as it is now sought to be located?

Mr. Monroe: That has been answered twice.

The Court: Let him answer it.

A. I don't see any objections due to the water.

Q. Now, the bill charges that this junction is sought on an elevation or fill. What is the approximate fill of the A. & V. at that point?

A. The elevated embankment there is about 8 feet. There is a depth of ballast there that would probably bring the ties, the bottom of the ties up to about 10 feet above the surrounding valley on the north side. It is apparently lower to the south.

Q. State whether the J. & E. in making this connection will be also be on a fill?

A. It will.

Q. How will the fill of the Jackson & Eastern correspond with the fill of the A. & V.?

A. It will have to reach the same elevation.

Q. You heard some testimony, and the bill alleges that grave dangers will arise, may arise, from the switch connection at this point on a fill. As a civil engineer what have you to say about that?

Mr. Monroe: We object to any reference to any testimony. He can give his own opinion, but not pass on other testimony.

[fol. 583] The Court: I think he can ask him that question, as an expert witness. I will overrule your objection.

Mr. Monroe: We except to the ruling of the Court.

A. I don't think the height of the fill has any bearing on the danger of the switch at this point.

Q. Why do you say there will be no objection because of the elevation?

A. Because the switching is done in the immediate vicinity of the track, not up and down the fill. The man stands practically on the track when uncoupling cars and he gets the signals from the position he stands in when uncoupling. I don't see that it matters to me whether it is on a fill or not.

Q. Is there any more danger about cars running off the track on a fill or on a level?

A. I can't see that there would be any increased danger at all.

Q. It is also alleged and there has been some proof made that this connection will be exceedingly dangerous because it is on a curve and on the outside of the curve. What have you to say to that?

A. I don't think that the location on the outside of the curve would be unduly dangerous. There is an element of danger in any break.

Q. You mean in switching anywhere?

A. Yes, sir, in switching anywhere, but there would be no appreciable increase of danger at this point.

Q. State whether there is such an increase in the danger as to prevent it from being done in first class railroading?

A. It is done when it is to their advantage to do so.

[fol. 584] Q. That is putting switches on the outside of curves?

A. On the outside as well as the inside.

Q. Do you know a single first class railroad that has no switch on curves, the outside of curves?

A. I don't know any railroad that hasn't a switch on the outside of a curve.

Q. How many switches on the outside of curves has the A. & V. between Jackson & Meridian?

A. I know of three.

Q. Where are they?

A. The west end of the house track at Pearson is on a curve.

Q. How many places do you know on the A. & V. between Jackson and Meridian where they have a switch on the outside of a curve?

A. Three. One at Pearson on the west end of the house track, one on the east end of the house track at Chunky, and the spur at Rice Hill.

Q. What about the yard in Jackson?

A. There are several in the Jackson Yards. There are two very close to Commerce Street, and one or two between State Street and the Union Station.

Q. That one near Commerce Street, how much curve?

A. I think it is a sharp curve.

Q. What do you mean?

A. That the degree is much greater than this one.

Q. That it is greater than this one?

A. Yes, sir. It must be double.

Q. Well, now, without taking them one by one, the bill alleges that it will be dangerous to make a connection here because of Curran's Crossing and because of the two trestles, one on each side of this proposed connection. What have you to say to that?

A. I don't see any reason it being in the neighborhood of Curran's Crossing would increase the danger. If anything it would decrease the danger at the crossing.

Q. What effect would this switch connection have on trains passing there that did not stop to do any switching?

A. It would have no effect.

Q. What effect would it have on passenger trains running by there?

A. No effect.

Q. Then what trains would be effected, if any? By the location of this connection.

A. These trains that entered through this connection on the tracks of the J. & E.

Q. Those that stopped to do switching?

A. Yes, sir.

Q. Those trains, then, that it would effect, what would it have to do with increasing the danger at Curran's Crossing?

A. Trains that stopped at that connection to work that switch would reduce its speed and stop entirely clear of Curran's Crossing, and it could not get up much speed as it left that place.

Q. What is it, if anything, that makes Curran's Crossing considered dangerous at all?

A. It is dangerous on account of the upward grade ascending towards the crossing on each side of the dirt road. The highway crossing is why it is considered serious at all.

[fol. 586] Q. Will this connection increase that danger at all?

A. It will have no effect on it.

Q. You say that it is the increased grade there that makes the situation dangerous. I understand that is on the highway?

A. Yes.

Q. How does that increase the danger?

A. It is the place where a team drawing a vehicle reaches the track, when the pull gets hardest the team in standing in the track.

Q. Suppose it is an automobile?

A. It is an ideal place to kill your engine when you reach that point.

Q. If the team should stall or the engine should be killed what effect would it have on the fast trains and the slow trains, with which ones would it increase the danger?

A. The slow trains would have a better chance to stop than the fast trains.

Q. What have you got to say about these trestles, about them increasing the danger?

A. The trestles would not increase the danger to do switching there.

Q. Why?

A. I think the logical way of handling interchange out there on that track would be to bring them into Jackson.

Q. By what?

A. It wouldn't matter whether it was one of the switch engines or the local train. In case it was to be brought into Jackson by local trains they need not cross Curran's Crossing any more than they do [fol. 587] now, except as to bringing the cut of cars out of the interchange track, they need not cross it any more than they would in making a direct trip straight through.

Q. Mr. Stacker, what is the objection, if any, to extending the yard limit to a safe point beyond this switch east of the interchange and switching the cars with a switch engine from the Jackson yards?

A. I would consider it the best way to handle the cars out of the interchange.

Q. What would be the objections to moving the yard board?

A. There would be no objections to it.

Q. An objection has been raised here that it would force them to run a switch engine out on the main line to do this switching, and that was an objection. What have you to say about that?

A. When the Gainesville Midland connected with the Sea Board Air Line they connected three and a half miles from Athens and they run mixed trains from Gainesville to the junction and cut off their cars and left them on the interchange track and carried the passengers on into Athens at convenient time.

Q. That was on what track?

A. The main line of the Sea Board Air Line. The L. & N. make an interchange with the Tennessee Central and run over two miles over the Tennessee Central line. Quite three miles over the main line of this interchange. Where the Sea Board Air Line connects with the Southern Railway in Charleston, S. C. it is nearly two miles from the yards of the Southern.

Q. What track is used?

A. The Southern uses their main track.

[fol. 588] A. I could give a good many more instances, but this is all that I can recall just now.

Q. How about the A. & V. at Meridian?

A. It is about three and a half miles.

Q. You mean from the station?

A. From the yard where it works and makes up its trains, does its switching.

Q. Up beyond this elevation?

A. Yes, sir.

Q. Do you know how the Mobile & Ohio makes its transfer of cars from the K. C.?

Mr. Monroe: I understood you to say that the A. & V. runs three miles in the yard limit on the main line beyond the point where the M. & M. crosses?

Mr. Stone: You will have a chance to cross him.

Q. Where are the A. & V. yards here in Meridian, as you understand it?

A. Out in that direction. (Ind.) Down west of 22nd Avenue. I don't know where the line between the A. & V. and the A. G. S. is.

Q. You don't know what the limit of the yard is?

A. Out that way their yard limit is possibly 1,800 feet beyond the M. & M. overhead crossing.

Q. From that yard board do you know how far back this way they use the main line of the A. & V.?

A. It is a considerable distance.

Q. Take the Mobile & Ohio when they interchange cars with the K. C. at Mobile?

[fol. 589] A. The interchange track between the G. M. & N. and the Mobile & Ohio, it must be between six and eight miles from the M. & O. Yards.

Q. Do you know what tracks are used?

A. The M. & O.

Q. Well, objection has been made that if this board is removed beyond this point that it would necessitate using the main line, which is not customary. State to His Honor, from your observation, experience for the number of years you have been a civil engineer whether or not it is customary to use the main line in making these interchanges?

A. It is frequently done.

Q. They, also, allege in their bill an objection on account of Curran's Crossing. I want to ask you whether or not first class railroads do their switching across public crossing?

A. In many instances they do.

Q. Take for instance in the city of Meridian?

A. There is extensive switching across the streets in the city of Meridian.

Q. And at Jackson?

A. They frequently switch across the streets in Jackson, also.

Q. Do you know 22nd Avenue in Meridian leading south?

A. Yes, sir.

Q. What do you know about it?

A. It is one of the most popular thoroughfares in the city.

Q. It is used more than any other street in Meridian in going to and from the portion of the city south of the railroad?

A. It is.

[fol. 590] Q. What street is used in reaching the Fair Grounds?

A. This street, 22nd Avenue.

Q. State whether or not there is switching done here in the yards across 22nd Avenue?

A. There is.

Q. Take the town of Newton?

A. There is switching across the drive ways and streets of Newton by both roads in Newton, the G. M. & N. and the A. & V. line.

Q. Do you know how many thoroughfares?

A. I don't know how many streets, but the main street leads from the courthouse down by the depot is across the railroad and the house track.

Q. Across the railroad and the house track?

A. Yes, and they have to switch cars there. That's true in nearly every town on the road or on any other road.

Q. Now, Mr. Stacker, I will ask you to consider the danger to the employees of the A. & V. Railroad in the operation of trains they do not stop to switch at this point, trains that pass on through, would it increase the danger to these employees?

A. It is negligible. No more dangerous than any other switch connection on the outside of a curve would be.

Q. All right, now, take the danger from trains that should happen to stop there and do some switching, and state to His Honor if there would be a great increase in danger there or any increase?

A. I don't see that there would be any increase of danger than the same danger of operating over any other switch.

Q. State whether or not that danger would occur anywhere that [fol. 591] a switch was made?

A. It would.

Q. Taking into consideration the danger to the employees of the Jackson & Eastern and the danger to the employees of the Alabama & Vicksburg in the delay in traffic of the A. & V. at Curran's Crossing, these trestles, the fact that it is on a curve and on a fill, and state to His Honor whether or not these things could constitute objections, and if so what objections, to the junction of this switch at this point?

A. There are no serious objections to any of these conditions there.

Q. Take all these difficulties into consideration and tell us what

reason, if any, there is to why this junction should not be made at this point?

A. I don't see any reason why the junction should not be made at that point.

Q. Something has been said about the grinding of the flange state whether or not this condition is peculiar to this locality whether it will occur anywhere that switch was made on a curve?

A. On all curves there is a tendency of the wheel on the outside next to the outside rail to point against the outside rail and the flange is put on the wheel to take care of that. The tracks are elevated on curves in order to protect this, and if the track is elevated sufficiently the tendency decreases, but if it is not elevated sufficiently it increases. On all curved tracks there is an excessive elevation and the train slides across the track towards the lower rail.

[fol. 592] Q. Suppose the point of the switch should be worn and broken, what is the remedy?

A. A renewal of the broken or worn point.

Q. Is the remedy for that point any different to any other points?

A. It is the same.

Q. Well, is there any way for the railroads to prevent that?

A. They put up with it rather than try to correct it.

Q. Something has been said, Mr. Stacker and there is an allegation in the bill, that the Jackson & Eastern will approach the A. & V. on a curve, the A. & V. itself being on a curve they will approach on divergent plains, I will ask you to state to the Court what objections there is to that, and what is the remedy?

A. That would make no difference, the only question would be of both lines occupying the same set of ties, then they would have to form some plan in building a switch connection.

Q. It is alleged in the bill—

Mr. Monroe: We object to any interpretations of the bill by the witness.

The Court: I think he should be allowed to explain to the witness. Go ahead and finish your question.

Witness: The question was that the approach on divergent plains, opposing plains in the approach of this track would have nothing to do with the switch at all, it would be after they reached the switch, then there would be no opposing plains in the track.

Q. Explain that.

A. In the construction of a switch the original track is generally considered as the main line as the track already in existence and the [fol. 593] switch would be put in without changing that.

Q. You mean that it would conform to it?

A. The plans would be the same.

Q. It is alleged in the bill that these divergent plains would prevent the coupling of cars at this point of junction. I want you to state to the Court whether there would be any coupling of cars at that particular point?

A. There should not be. There would be no reason to couple

cars on this junction unless the cars were improperly carried, improperly placed in the train.

Q. Would it have any effect on the coupling at all?

A. Not at all.

Q. In approaching the point where the Jackson & Eastern higher rail will conform to the A. & V. elevated rail, how will the Jackson & Eastern track be built?

A. You mean in regard to the elevation of the two rails?

Q. I want you to describe the Jackson & Eastern track a little off from the A. & V. line, whether or not one rail will be elevated above the other?

A. As they leave the switch ties the north rail in the J. & E. track would necessarily be higher than the south rail, but these two rails would be practically the same elevation after that point. As to whether there would be an elevation of the outer rail of the Jackson & Eastern curve is a question that depends largely upon the conditions. There is intended to be so far as I see now no elevation put on the Jackson & Eastern curve, intended to be no super elevation of the outside rail of the Jackson & Eastern track.

[fol. 594] Q. Why?

A. The speed at that point will be very slow, and the elevation and speed are so related that if they don't run at high speed you have no need of any superelevation, it throws the load on the inside rail of the curve, therefore being unequal, and if there was a tendency to settle it would settle under the heavier load, but in that location I don't see any necessity for any superelevation, certainly not within some distance of that connection.

Q. State to his Honor whether the construction of the track in the manner and method as planned and outlined by you could give rise to any danger in operating a switch engine or any engine, whether it would be greater there than any where else, if so why?

A. The danger in operating a turn out, the element that controls is the speed and if they were to regulate the speed in switching the cars through that switch to a speed usually maintained and ought to be maintained in good railroading I see no reason for any danger other than the element of danger connected with all switching.

Q. State to the Court whether or not there would be any appreciable danger there?

A. No, sir, no appreciable danger.

Q. Now, something has been said and there is an allegation in the bill, too, about it, I think that this curve on the A. & V. would obscure the vision of the engineer as he approached this point from the east, going west. State whether that is the case on every curve, that curves like this one, around to the left?

A. When there is a curve in a track, the direction in which the [fol. 595] train is operated the engineer's view is obscured more or less.

Q. The condition here would be the same as at any other curve?

A. That turned away from the engineer's side of the engine.

Q. Take all the trains that come through there and do not stop to do any switching would the condition there be different from any other point where there was a similar curve on a switch?

A. If they had no switching to do there would be no difference.

Q. It is charged that it will interfere with the automatic coupling of the cars on the curve, in making this connection, what have you to say about that?

A. There is nothing to interfere with the automatic coupling at all.

Q. Why?

A. There would be no more difference in this than in hundreds of other cases.

Q. It is also charged that it will interfere with the block signal?

Mr. Monroe: Will you qualify him as a block signal operator.

Q. Have you ever had any experience with the block signal system?

A. I have made a study of the block signal system. I have never actually had control and supervision of the operations of the block signal, but I do know, however, from study, the principle on which they operate.

Q. Do you not know how they operate?

A. Yes.

Q. What effect, if any, would it have on their block signals?

A. I would necessitate rearranging their insolation in a number of places.

[fol. 596] Q. The point I want to ask you is whether that would occur any where along the line where they had the block signal system?

A. It would occur at any point, but with some rearrangement of the insolation it would be corrected.

Q. Has the curve or the fill anything to do with it?

A. No.

Q. Would Curran's Crossing have anything to do with it?

A. No.

Q. Would either of those trestles have anything to do with it?

A. No.

Q. Now, then, there has been some testimony with reference to the difficulty of switching cars on account of the trestles. What have you to say about that?

A. I think that the train crews could adjust their work so the trestles would not interfere with them. It is practical to do so. The arrangements for interchanging them in and out of there has never been definitely prescribed so far as I know in as much as we have no interchange there.

Q. How was that?

A. We have no interchange and no definite plans has been formulated for handling interchange cars.

Q. You mean on the tracks out there, is that it?

A. The tracks are not built. None of it has been built. There is no connection and no discussion as to how the A. & V. will handle the interchange, nothing definite.

Q. Suppose we get the interchange tracks built, what difficulty would there be then in switching cars back and forth, if it was built? [fol. 597] A. I can see no difficulty occurring there, no special difficulty.

Q. Now, Mr. Stacker, state to the Court whether or not the facilities there for building an interchange track, whether there are grounds there for the building of an interchange?

A. Yes, there is ample room to develop an interchange track.

Q. Will it have to be built before they interchange cars there?

A. There would have to be an interchange track provided before interchange business could be accomplished.

Q. Mr. Stacker, I want to ask you how much of this, what is the length of the grading that has been completed on the Jackson & Eastern at the Jackson end of the line?

A. A little in excess of a mile is completed.

Q. Do you know how much of the right of way has been procured from Sebastopol to this point?

A. Between 80 and 90 per cent.

Q. I want to ask you this further question, as to whether there is any other line as suitable for this connection as this line selected, if so where it is?

A. There is no other line that would be as suitable.

Q. Do you know of any other point as suitable?

A. Taking all things into consideration, no.

Q. Mr. Stacker, how long were you out on the ground Wednesday at this point?

A. About two hours.

Q. Did you see any train pass there?

A. No, sir.

Q. Did you hear any?

A. No.

[fol. 598] Q. Were you out of hearing during that time?

A. No.

Q. Were you out of sight during that time?

A. Yes, sir.

Q. How far and how long were you out of sight?

A. Only a short while, a few minutes. Instead of going out the Fannin Road as far as the balance did we turned around within a mile or less of where the Fannin Road branches off the concrete road.

Q. You didn't go all the way?

A. We went about a mile and turned around and came back.

Cross-examination by Mr. Monroe, for the complainant:

Q. Mr. Stacker, if you were going to make a junction between two railroads and you had the option of making that junction at a place where both roads were on a tangent and you had another place where one was on a tangent and the other was on a curve, other things being equal, which place would you select?

A. Where both lines were on a tangent.

Q. If you were going to make a junction and you had the option of selecting a place where one line was on a tangent and the other

on a curve or a place where both lines were on curves, which would you select?

A. I can't see that it would make much difference.

Q. You can't see that it would be preferable to have the junction where one line was on a tangent?

A. If that was the only consideration the fact that both lines were on curves or that one line was on a curve and the other on a tangent, it wouldn't make any difference.

[fol. 599] Q. It would make no difference?

A. There might be conditions under which they would be different.

Q. What would these conditions be?

A. If the bulk of the traffic was to be handled over the curved track it would be preferable to put the switch in on the tangent. If one track is curved and the other track is straight and the bulk of the traffic was to be handled over the straight track there would be no objection to that connection.

Q. If you were going to put in a connection between two roads and you had an option of putting it in at a place where there was a fill and at a place where there was no fill, other things being equal which would you select?

A. Where there was no fill.

Q. If you had an option to make a junction between two roads at a point where the switch would be over a high way crossing, which was frequently used, or at a place where there would be no switching over a highway crossing, which would you select?

A. Where there was no highway crossing.

Q. If you had an option of making a junction between two roads at a point where the junction point was subject to the menace of periodic river floods or at a place where the junction was not subject to any such menace, which point would you select?

A. Where there was no such menace.

Q. If you had an option to make a junction point between two roads at a place between two trestles or at a place where there were no trestles, which would you select?

A. Where there were no trestles.

[fol. 600] Q. Tell me why you would select the place where there were no trestles?

A. Because the trestles might be near enough to seriously interfere with the junction. There are conditions under which the trestles might get in the way. If there are no trestles then the trestles couldn't interfere.

Q. Why would you select a place where there was no road crossing?

A. Because it would eliminate entirely all danger from traffic along the road where there was train operations.

Q. Why would you select a place where there was no fill?

A. Because the construction of the connection would be much simplified.

Q. Why would you select a place where there was no curve?

A. Because in putting in a turn out the simplest possible turn out is where the tracks meet in straight lines.

Q. Is every cut in the rail of a railroad a serious or possible danger?

A. It is.

Q. Is a cut in the rail of a railroad greater or more serious danger when the cut is on a curve than it is when the cut is on a tangent?

A. In a degree it is.

Q. Is the cut in the outside rail of a curve greater or less at a point where high speed is maintained than it is at a point where low speed is maintained?

A. The danger increases as the speed increases, even though it might not be in direct proportion.

Q. So that each of the elements which I have pointed out to you [fol. 601] presents to your mind an objection which would lead you to seek a location in which that element was absent, that is you would seek the alternative where the curve is absent, you would seek the alternative where the fill is absent, you would seek the alternative where the trestles are absent, and you would seek the alternative where the speed is absent, other things being equal?

A. I would choose the ideal location every time.

Q. Each one of these present an objection which would lead you to choose their alternative?

A. If I had the option between an ideal condition and one which was not ideal I would choose the ideal.

Q. I would like for you to take your profile, if you will, and tell me if I am correct in stating that the proposed amount of openings in your proposed dump, beginning at the A. & V. dump near the proposed point of intersection and extending up to the 2-ft. pipe concerning which I questioned Mr. Duffee, amounts to something less than six per cent of the total distance?

A. I don't know.

Q. Take your profile then, beginning at the A. & V. track and give me the distance to the first opening?

A. It is 700 feet from the beginning to the first opening.

Q. I want the distance from the point of intersection of the A. & V. track, dump, which I understand is where the dump of the A. & V. and the J. & E. would join?

A. Where they are going to join?

Q. Yes?

A. The distance would be approximately 350 feet.
[fol. 602] Q. Then the opening is what?

A. 100 feet.

Q. And the next distance is what?

A. 100 feet.

Q. And the opening is what?

A. 200 feet.

Q. And the next opening is what?

A. 10 feet.

Q. And the next distance is what?

A. 1,100 feet.

Q. Suppose you take the profile and take the total distance up to

Hog Creek, give me the total distance to Hog Creek, but I want first the distance to the 2-ft. pipe?

A. The 2-ft. pipe?

Q. Can't you locate the 2-ft. pipe, it is indicated there on the profile?

A. I think this is it.

Q. Mr. Duffee, gave me the first distance as 700 feet and the first opening as 550 feet, the distance to the first opening as 550 feet, I should have said and then an opening of 100 feet?

A. The opening is right.

Q. What about the distance of 550 feet?

A. I think that is too much.

Q. Give what you think is right, I want to get your answer?

A. 400 feet.

Q. Then what is the next distance?

A. 1,100 feet.

Q. What is the opening?

[fol. 603] A. 200 feet.

Q. What is the distance?

A. 1,100 feet.

Q. And what is the next opening?

A. 10 feet.

Q. What is the next distance?

A. 800 feet.

Q. What is the next opening?

A. 100 feet.

Q. What is the next distance?

A. That is part of a 100 feet in there, 830 feet, approximately.

Q. What is the opening?

A. 42 feet.

Q. What is the next distance?

A. 750 feet.

Q. And what is the opening?

A. Two feet.

Q. And the next distance is 1,700 feet?

A. Yes, sir.

Q. And the next opening is 56 feet?

A. Check.

Q. And the next distance 2,050 feet?

A. Correct.

Q. And the next opening 2 feet?

A. Correct.

Q. Up to there Mr. Duffee said that the percentage of open to solid fill in your embankment was 5.7 per cent, is that correct?

A. 5.7 per cent is approximately correct.

[fol. 604] Q. Can you tell us how far, on map Exhibit "F" you have to go to get that 5.7 per cent?

A. To the red line across the center line of the J. & E. marked "2-ft. pipe," between station 90 and station 100.

Q. We can identify it more readily as 2-ft. pipe?

A. It crosses between stations 90 and 100.

Q. Just south of mile post 60?

A. Yes, sir.

Q. Now, then coming from that point 2-ft. pipe up to Hog Creek and give me the percentage of openings to solid fill, I don't want them in detail, just the total opening and total fills, and the percentage.

A. From that point on?

Q. From the 2-foot pipe to Hog Creek including Hog Creek?

A. Including Hog Creek?

Q. Yes?

A. Approximately 2 per cent.

Q. Approximately 2 per cent?

A. Yes.

Q. What is the actual number of feet of openings in that distance?

A. 533½.

Q. And what is the actual number of feet of solid fill?

A. 261 plus 17 stations.

Q. Give it to me in feet?

A. 26,117 feet.

Q. So that in the distance from the pipe which is marked 2-ft. pipe on map "F" up to and including Hog Creek there is 533½ feet of openings and 26,117 feet of dump?

[fol. 605] A. That is correct.

Q. Now, Mr. Stacker, look at the map again, if you will, and let us suppose that on the line of the concrete road up to this intersection with the Fannin Road and thereafter on the line of the Fannin road up to the vicinity of the 2-ft. pipe, there is built in that valley an embankment which had never been there before and which varied, say, from a foot elevation at the higher end and attained a three to three and a half foot elevation from the intersection of the two roads, and that road or embankment had no openings under it whatever, would or would not such a construction increase the amount of water which in flood times necessarily came to Farish Bridge and points west of Farish bridge?

A. I think so.

Q. Now suppose that after that embankment which I described to you was built there was built on the proposed line of the Jackson & Eastern Railroad a second embankment which was from one to three feet higher than the first embankment which I have described, and suppose we had a flood which came over the top of the first embankment, would or would not this second embankment, on the line proposed line of the Jackson & Eastern divert additional water to Farish Bridge?

A. If the water was not provided for by openings.

Q. If there were no openings?

Mr. Stone: We object, no such embankment could be built.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. If there were no openings in the bank there would be more

water diverted in the main river down towards Farish Bridge than it [fol. 606] would if it was not built.

Q. In the case that I have mentioned would there be diverted to Farish Bridge a material increase in the water?

A. There are other conditions—

Q. Eliminate the other conditions?

A. There are matters that make it impossible for me to answer your question.

Q. What other conditions do you refer to?

A. The conditions that exist up stream from this point.

Q. Now, Mr. Witness, when that water comes down to the point 2-ft. pipe, and we are dealing now with flood times, it goes out of Pearl River banks and first comes up in this neighborhood until it is forced against the road embankment which I have described. In that case, regardless of the conditions which may prevail above, the presence of the road without its openings necessarily diverts additional water under Farish Bridge, does it not?

A. Considering the road and these openings south, it would be impossible to answer your question.

Q. Let us suppose, Mr. Stacker, that we have a flood in Pearl River to day and the water goes over the land between Pearl River, indicated on the map "F" and the line of that road, and let us suppose that road is not there. Where will the water go to seek its outlet?

A. Is there any reason why it can't go back across here? (Ind.)

Q. Do you mean the water run back up stream?

A. I want to ask you a question?

Q. Well answer me first?

A. The conditions that might exist there would effect the answer. [fol. 607] If any flood water above should rise against the solid embankment there it would prevent the water passing across the flat and force it through the opening designated as Farish Bridge and the river opening proper, but such a condition, I don't believe could exist, however, if it did, that would be the result.

Q. Let us suppose that we have flood water that comes out of the banks of Pearl River and it should strike the intersection point down there, where will be the natural flow of that flood water?

A. Under the embankment.

Q. In a westerly direction we have a line indicating a running stream until it crosses Fannin Road at a point marked with a pencil "11", then in a southeasterly direction across the low ground to the east of Fannin Road. Now if that road embankment is built where that red line shows, will the course of the water be interrupted?

A. With no openings provided.

Q. It would?

A. Yes.

Q. Suppose there is another embankment of 2 or 3 feet higher, where does the water that crosses over the first embankment go?

A. There are no openings?

Q. No openings?

A. It would continue down towards Farish Bridge opening and the main river opening.

Q. What would be the effect on the elevation and the velocity here?

A. That would depend entirely on the amount of water.

Q. The effect would be to increase with the increased quantity of [fol. 608] water?

A. The tendency is that the increase in height also increases the velocity.

Q. The bigger the flood, the greater the height and the greater the velocity?

A. That would depend on whether or not this water coming out here will have a higher elevation than the water down there.

Q. What is the flow of Pearl River in this vicinity?

A. I don't know what it is, but it is not considered a rapid stream, it doesn't have a rapid flow.

Q. Well, what would you say?

A. In the neighborhood of a mile and a half to two miles an hour.

Q. Now, can you locate Hog Creek for me on this map, Exhibit "A"?

A. Hog Creek has a track line indicating a stream.

Q. From Pearl River towards the east and south, just south of the point Marked Lucknow on Exhibit "A" to Mr. Duffee's testimony, is it not a fact that from Hog Creek down to the proposed point of intersection that the proposed Jackson & Eastern Railroad approaches gradually to Pearl River?

A. The distance is less as you get near the junction, the proposed junction of the A. & V.

Q. Is it not a fact that the line of the dump goes down Pearl River valley in a natural flat or funnel and that the neck of the funnel is between the bluff on the Jackson side and Farish Bridge?

A. You mean——

Q. That it would flow as in a funnel?

[fol. 609] A. The point between the embankment of the Jackson & Eastern Railway and the bluff on the west side of the River, opposite Lucknow would be wider than the space between the J. & E. at the Junction with the A. & V. Railway and the bluff on the Pearl River.

Q. Which has a gradual converge, since that volume of water moves down the ditch which necessarily increases the flow and velocity and increases the height, does it not?

A. Not necessarily.

Q. Why not?

A. Because it may move very slowly and the velocity would be similar, and in this case there is a gradual leak out of one side.

Q. But you have not answered my question about the velocity of the water?

A. You are assuming there are no openings through which the water could go?

Q. Yes?

A. Then the velocity would increase.

Mr. Stone: We can't see the pertinency of any such question.

The Court: I can't pass on it until I see what he wants. So will overrule your objection.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. So Mr. Stacker, your theory that in the present instance the height of the water and the velocity of the water will not be increased at Farish Bridge and Pearl River Bridge and damage to the A. & V. Railway is predicated on the fact that the openings under the Jackson & Eastern are adequate to take care of the water?

A. Yes.

[fol. 610] Q. And predicated entirely on that fact?

A. It is.

Q. You have stated, however, that the openings from Hog Creek down to the 2-foot pipe amount to only two per cent of the total distance?

A. That's correct.

Q. And you have said that the openings from the 2-foot pipe down to the point of junction amount to slightly less than six per cent of the total distance?

A. That is correct.

Q. Now, what is the average elevation of the proposed fill of the Jackson & Eastern from the 2-foot pipe up to Hog Creek?

A. In the neighborhood of three feet.

Q. That is the average?

A. I would say that was the average, but I have not averaged it.

Q. And if you have got a flood that presses against your bank of three feet for a distance of 26,117 feet, or something over five miles you think that the openings of 533 feet in length would carry off that water?

A. If the solid wall was coming down the valley three feet high the openings wouldn't carry the water off, however, I don't expect any such tidal wave to sweep down the valley, because that is not a habit of the River to rise all at once. These flood waters come gradually, the higher it rises the slower the rate it rises, because what overflows the bank covers a wider territory. I can't conceive of a wall of water being thrown suddenly flooding the valley three feet high. If it did the openings wouldn't take the water off.

[fol. 611] Q. But if you have got water against your bank three feet deep up even with the top of your bank, you would admit that these openings would not carry the water off?

A. No.

Q. Do you mean no, it would not carry it off?

A. No, I don't think so.

Q. All right—

A. The water by the time it got three feet high on the west side of the Jackson & Eastern would certainly have some height on the east side, that is the point there.

Q. Now, Mr. Stacker, were you there in the high water in 1921?

A. In the Pearl River valley at this point, no.

Q. When were you ever at this point in the high water?

A. In 1922.

Q. 1922?

A. Yes, sir.

Q. Do you know the height of the water in 1922 as compared with the high water in 1923?

A. It was considerably lower.

Q. Do you know how it compared with the high water in 1921?

A. I believe I have given you that answer.

Q. It didn't impress me?

A. I think it was lower.

Q. Have you ever made any study of the height of the floods in Pearl River Valley?

A. I have, immediately after the high water in 1921 I made it a point to go in there and see where the water had reached. I got there before the marks of the high water had been devastated by the [fol. 612] rains. I investigated the conditions all the way up to Hog Creek. And above Hog Creek.

Q. Did you make any investigations of the high water conditions in Pearl River Valley at other times?

A. At what times?

Q. At any time?

A. I did investigate the water conditions there during 1922 during the high water, while the water was at its peak. These two years were the only times that I have actually been to Pearl River bottom and made any personal observations of the flood stages.

Q. Have you any knowledge of the height that the water reached in years prior to 1921?

A. No knowledge of my own. I did investigate by making inquiries of the older inhabitants and gathered information from them.

Q. What was your information as to the probable high water in Pearl River valley?

A. That it would never again reach the height of the 1902 flood. In all probability the 1921 flood was the maximum.

Q. Did you have any information of other floods, between 1902 and 1921?

A. None except from the same people from whom I got this other information.

Q. How did the intervening floods compare with the 1921 flood?

A. That was about the highest. There may have been some minor difference, given by different parties, you never get the same information about a thing from different people. They never see or remember things alike. But I formed from the information that I gathered that that was the average high water stage.

[fol. 613] Q. In 1921?

A. Yes, sir.

The Court: We will now adjourn until tomorrow morning at 8:30.

[fol. 614]

Saturday, August 18, 1922—8:30 o'clock a. m.

P. L. STACKER resumed the witness stand and the cross-examination was continued by Mr. Monroe.

Q. Does the water in Hog Creek and Pelahatchie Creek and Neill Creek run into Pearl River or away, in the ordinary stages of the water?

A. The water is carried by Neill Creek or Neill Bayou and Hog Creek and runs into Pearl River. At high stages when the river backs out of the banks it retards the flow of the water and it spreads over the banks of Neill Bayou and Hog Creek, and that water spreads down the river valley. Pelahatchie Creek has a distinct valley of its own. All the waters carried by Pelahatchie Creek are later carried into Pearl River above the point where the overflow reaches the right of way of the Jackson & Eastern Railway.

Q. What about that other stream, Prairie Branch?

A. That is a small creek.

Q. Does it run into Pearl River?

A. In low stages of the water it flows towards the River, but in flood stages the flow of the water is away from the River.

Q. Pelahatchie Creek is at the point indicated on the map, Exhibit "B" to Mr. Duffee's testimony, is it?

A. Pelahatchie Creek is shown on the topographical map in township six, North, Range two, east, and empties in the Pearl River approximately 16 miles north east of the junction of the A. & V. and the proposed Jackson & Eastern.

Q. Are the forests on Pearl River to the north of the proposed point of junction being cut?

[fol. 615] A. In places. There were saw mill operations going on in there in 1920, '21 and '22.

Q. Would the proposed building of the Jackson & Eastern have any effect on the removal of the forest up north of this proposed junction?

A. It would very likely increase the rate in which they are cutting.

Q. Does the removal of the forest have any effect upon the floods?

A. It does.

Q. What effect does it have on the floods?

A. It has a tendency to increase the rate of the flood water and increase the intensity of the flood.

Q. You said there was a tangent on the A. & V. Railroad in the vicinity of Pearson. I didn't catch yesterday whether you said it was to the east or to the west of Pearson?

A. The tangent?

Q. On the A. & V.?

A. My recollection was I said that there was a tangent west of Pearson. There is one east of Pearson, also.

Q. My understanding, also, was that you said that the Jackson & Eastern could join the A. & V. on a tangent, at that tangent of the A. & V.?

A. It would be possible to turn out of that tangent on the A. & V.

Q. With a tangent on the Jackson & Eastern?

A. Very likely. No investigation has been made of that. I [fol. 616] simply thought it would be possible to do that, but whether it is practical or not, I can't say.

Q. You can't say that it would not be practical?

A. I do not say it would not be practical.

Q. There is no public road crossing that A. & V. tangent is there?

A. That I couldn't answer.

Q. There is no fill at that tangent of any 10 feet, is there?

A. I made no detailed examination of the physical condition there as it is not the point we considered. But I do recall from riding over the A. & V. that there is a tangent to that curve at Pearson. I have no distinct recollection as to the height of the embankment, or any road crossing in that vicinity. I know there is a road going south from the Brandon Highway, between the Dixie Highway and the point should be opposite Pearson, but whether that road crosses the A. & V. or not, I am not in a position to say.

Q. In the construction of a railroad the most economical construction, generally speaking, arises when the amount of cut and the amount of fill is about equal, balance, is that not so?

A. If you are considering the grading alone, the most economical construction would be when the line of cut and the line of fills are equivalent.

Q. This map "F" which we have here and which is frequently referred to in this case is to a very large extent a photograph of the Jackson & Eastern map?

A. I think so. I have not compared it with the blue print, but it looks like it. I didn't do the work.

Q. Have you got the Jackson & Eastern plan here so you can [fol. 617] check it up?

A. If I have got to swear to it I would have to check it in detail.

Q. I don't want you to check it in detail, because, as a matter of fact, it is a photograph of it?

A. I believe it is. I am satisfied that Exhibit "F" is in part a photograph or reproduction of the blue print of our map.

Q. Speaking of a part of it, I would like for you to be a little more specific in regard to what part of Exhibit "F" is a photograph of the J. & E. map? Run a rough red line and mark it AB and CD on there so as we can get it?

A. Exhibit "F" in question is a photograph or copy of the map made by the Jackson & Eastern Railway Company's engineer in so far as that part of the Exhibit, including that part between the red lines marked A prime and B prime, and C prime and D prime.

Q. Have you any map of the A. & V. Railroad from the lines, marked C prime and D prime, east of Pearson?

A. I have no map of the A. & V. Railway east of Pearson.

Q. I asked you whether you had one of the line from C prime and D prime to Pearson?

A. I have no map of the A. & V. Railway.

Q. If the embankment of your road is three feet high above the

level of the surrounding land and openings are left under that bankment, what would be the height of these openings?

A. The fill is three feet and the openings would be less than three feet on account of the construction.

Q. Does this three feet apply to the difference between the grade line and the ground at the point of the opening or is it the average [fol. 618] general elevation?

A. The three feet I referred to is the three feet you gave me the average elevation.

Q. The three foot average from the 2-foot pipe up to Hog Creek?

A. It would be misleading to answer that question without stating that the average takes into consideration the shallow and deep fills and the openings are not left out.

Q. If you have water on one side, we will say three feet high and there is no water on the other side of that opening and the natural lay of the land is down through the opening, will the water flow through there as fast or faster than if there is a height of water three feet on the top side and two feet on the bottom side?

A. I wish you would state your question again?

Q. I want you to compare the conditions if the water on one side is three feet high and on the other side only two feet, or if it is three feet on one side and no water on the opposite side?

A. It would flow faster where there is no height on the opposite side.

Q. Can you tell me from your estimation generally how the prospective business of the Jackson & Eastern line will compare with the business of the A. & V. at this proposed point of Junction?

A. The proportion between the volume of traffic?

Q. Yes? Wouldn't you be safe in saying that the volume of the A. & V. traffic was many times the volume of the traffic of the J. & E.?

A. Absolutely.

Q. Would there be any traffic on the Jackson & Eastern coming to this point which would move east on the A. & V.?

[fol. 619] A. I have made no study of the proposition, but it would seem to me that there would be little that would move east, comparatively little that would be turned over to the A. & V. to be moved east, back towards the east.

Q. There would be some?

A. I can't say that there would be any. I can see no reason why in view of the kind of traffic that we expect to handle, I don't see why there should be any shipped back east over the A. & V. It is possible that occasionally there will be an individual car. I can't say there would not.

Q. Are you aware that in the discussion of the conditions with the A. & V. that the Jackson & Eastern representative stressed very strongly the fact that there would be a large volume of traffic to be handled east on the A. & V.?

Mr. Stone: We object.

The Court: I don't think that would have anything to do with

it, but then I suppose he has a right to make the proof, so I will overrule the objections.

Mr. Stone: We except to the ruling of the Court.

A. I don't know that there was any statement as to which way the traffic would move in the discussion, as it was not part of the business that I was interested in. I know of no statement as to any business moving east at all.

Q. Did you make any study of the proposed line from Lucknow on the map, Exhibit "A" to Mr. Duffee's testimony to Pearson?

A. No, sir.

Q. Did you make any reconnaissance of such a line?

A. If you are speaking of a line, I made no reconnaissance of any [fol. 620] line, I made a reconnaissance of the country with a view of locating a line, and no definite line was considered at all until that reconnaissance was made. As to a definite line from Lucknow to Pearson, we didn't consider it because the country wouldn't justify it.

Q. You stated that the hills which would interfere with it were immediately north of Pearson?

A. They are kind of in the neighborhood of Pearson, north of Pearson.

Q. Going south from Lucknow to Pearson, you never went over that line with instruments, the proposed line from Lucknow to Pearson?

A. There was no proposed line from Lucknow to Pearson. There were sufficient instruments used to see that it was impossible. I carried a pocket compass, and other instruments, enough to know that it was impractical.

Q. If the Jackson & Eastern Railroad instead of coming out in the vicinity of Pearl River at Farish Bridge skirted the high ground to the east of Pearl River Valley, it wouldn't cross the flood water of Pearl River Valley at all?

A. It would be possible to build a line on the foot hills along the Pearl River valley without touching any area subject to overflow except that area along the tributaries of Pearl River, Pelahatchie Creek, Hog Creek and other branches.

Q. That line could be built in that way down to the intersection of their line with the A. & V. Railroad, could it not?

A. It would be possible to do so.

Q. And how deeply you would go into the foot hills would depend on how far you went to the east, I take it?

[fol. 621] A. It would.

Q. For what distance, beginning at the proposed point of junction is the proposed line of the Jackson & Eastern Railroad within reach of the Pearl River floods?

A. Approximately five miles.

Q. What is the nature of the dump of the Jackson & Eastern for that five miles, what material would it be made from?

A. From the material that is found adjacent to the line, along that portion of the line.

Q. That is largely alluvial sand?

A. Yes.

Q. Is that alluvial soil subject to ready erosion by flood waters?

A. When that material is deposited in a fill it is.

Q. It is subject to erosion?

A. When that material is used for a fill it will have a vegetation on it, a growth, that will protect it from the rains.

Q. You mean protect it to a certain extent?

A. Not absolutely, but it will be a protection. The erosion of a railroad embankment is during the first 12 or 18 months probably 10 times as great as in the second 18 months. That is because this erosion is less and less, although it would be worn by the elements and the water.

Q. Would there be any maintenance charge on the embankment except to flood waters?

A. Occasioned by the fact that it would become saturated with water, and it would be subject to settlement.

Q. On account of the material of which it was made?

[fol. 622] A. It would have to be widened until it reached the stage where the water rising on the slope wouldn't affect it further.

Q. But that would mean continual repairs to the bank for a period after each flood water?

A. No, it would mean repairs to the bank as long as the water effected the bank then there would be no change, and it would remain.

Q. Have you ever built a railroad in a river valley, subject to floods, where there would be no increased maintenance charge because of that fact?

A. Naturally there would be over the first few years of maintenance.

Q. Your counsel asked you if there was any more danger on this curve at the proposed junction point with a switch on the outside of the curve than there is at any other similar curve, and you naturally said there was not. I ask you if there is any more danger on this curve with the switch on the outside of the curve than there would be if the switch was placed in a tangent?

A. There is an element of danger that would not exist if the turnout switch was from a tangent. It is not an undue danger. It is not a danger given serious consideration when it comes to putting in side tracks for their own operations.

Q. Your counsel asked you if the objections to having this junction on a fill was any greater than the objections to having the junction on any other similar fill. I ask you if the objections to having a junction on a fill would be greater than the objection to having a junction on a level?

A. A junction on a level would be a nearer approach to the ideal. [fol. 623] Q. Your counsel asked you if this proposed junction between these two culverts was any more dangerous or objectionable than a junction between any other two similar culverts. I ask you if a junction between these culverts would not be materially more

objectionable than a junction at a point where there was no culvert, I mean trestles?

A. I don't consider the proximity of the two trestles, east and west, of the proposed junction a serious objection. That business, or my supposition as to how the business would be handled at a point of that sort, I don't see how those trestles, either of them, would interfere in any way with the proper operations of an interchange connection at this point.

Q. You have, yourself, never been a locomotive engineer or a member of a train crew?

A. No.

Q. You have never had any operating experience in the actual operation of a train as the member of a train crew?

A. No. I have had to do with these things, but as an actual operator, and the member of a crew, I have never been one.

Q. You said that these operations could be so handled as not to include the handling over the trestles. Explain that to me, please.

A. Explain why I think so?

Q. Yes?

A. In going into this connection for any purpose the idea would be to break you-connection as near the switch clearance as possible to avoid any unnecessary movement in the distance between the clearance point, and the trestle, which is 450 feet or 500, I believe, [fol. 624] with careful operation it would be perfectly feasible for a train crew to arrange to stop at that point, if they wanted to break their train within that distance. I have seen it done frequently within a very close distance to the clearance point, between the tracks of a turnout. I don't see any reason why the connection couldn't be broken without having to go on that trestle or have the trestle in any way interfere with it.

Q. Let us proceed on the theory that the trains of the A. & V. Railroad average from 50 to 60 cars, what length would they have to go for a train of that length?

A. 60 cars covers about 2,400 feet.

Q. Plus the locomotive and caboose?

A. If they are not counted in the train length.

Q. What would be the length of the locomotive?

A. 65 or 70 feet. A locomotive is probably not less than 70 feet long.

Q. And the tender?

A. I mean the locomotive and the tender, when I say the locomotive.

Q. So you would have 2,470 feet from the front to the end of the caboose?

A. Approximately.

Q. If that train coming from the east and stops with its pilot clear of the point of connection, it would have how much of its train length remaining to the east on the west end of the trestle?

A. May I ask you a question, Mr. Monroe?

Q. Answer my question first.

A. It is just a point in the question?

Q. Do you understand the question?
[fol. 625] A. No.

Q. I ask you to look at the map and tell me how much of that 2,470 foot train moving west on into Jackson would be to the east of the west end of the east trestle if it come to rest with its locomotive pilot clear of this junction point?

A. 1,470 feet.

Q. If that train came to rest clear of Curran's Crossing how much of the train length would be over the trestle, how much of the train length would be east of the west end of the trestle?

A. Probably 1,350 feet.

Q. And the next 400 feet of that train which would be left would be actually on the trestle in the case I have indicated to you?

A. In the answer I gave you I included all the length of the train that stood on the trestle as being east of the west end of the trestle.

Q. Of the 1,700 feet about 400 feet would actually be on the trestle?

A. Yes, sir.

Q. If you had a train of the same length, 2,470 feet, coming out there from Jackson, moving east, and it stopped so as to leave Curran's Crossing clear, what portion of that train would be west of the east end of Farish Bridge trestle?

A. I think there would be probably 100 feet less or possibly 200 feet less than the other, and that would range from about 1,670 or 1,570 feet. It would be somewhere between 1,600 feet and 2,000 feet.

Q. Between 1,600 and 2,000?

A. I think possibly that 1,600 feet would be the maximum that [fol. 626] would be west of the east end of the trestle.

Q. In this case the complete 400 feet of trestle would be covered by the train?

A. Yes.

Q. So that when you came up to this proposed point of junction, if you wanted to keep Curran's Crossing clear without cutting your train, you would have to stop your train, if you were coming from the west with the train over Farish Bridge, and if you were coming from the east over 400 foot of trestle?

A. You would.

Q. Do you know what the degree of curvature in the A. & V. road is in the curve at Chunky?

A. Approximately two degrees.

Q. At Chunky?

A. Approximately one degree.

Q. Do you know whether or not Chunky is an incorporated town?

A. I do not.

Q. Do you know what the approximate curvature of the A. & V. road is at Rice Hill?

A. No.

Q. It is materially less than one degree is it not?

A. It is a rather light curve.

Q. Do you know whether the curve at Pearson from which the outside switch of the A. & V. turns out is on a level or on a fill?

A. I couldn't say whether it is on a level or on a fill.

Q. Do you know whether or not the switch which you say takes out on this one degree at Chunky is on a level or on a fill?

A. I couldn't say positively.

[fol. 627] Q. Do you know whether or not this slight curve at Rice Hill from which you say a switch turns out on the outside, is or is not on a fill?

A. No.

Q. Do you know what the curvature of the A. & V. track at Greenfield is?

A. I don't think the curve is any sharper than two degrees. I didn't give it much consideration.

Q. The Greenfield curve is materially lighter than the Rice Hill curve?

A. It is a light curve, I don't know really whether it is lighter than the Rice Hill curve or not.

Q. So you couldn't tell whether it was a 50 minute or two degree curve from your recollection?

A. No.

Q. And you don't know whether it is on a fill or not?

A. No.

Q. In case the junction point was established at the proposed point of junction, would that necessitate a switching movement over Curran's Crossing?

A. It would.

Q. Does every additional switching movement over Curran's Crossing, other things being equal, increase the danger at that crossing?

A. It does.

Q. Does the switching movement at a crossing at which the highway approaches it on a stiff grade increase the menace or decrease the menace?

[fol. 628] A. If it is a switching movement the menace is less than a through train movement at that crossing described, provided the number of times the crossing is crossed is the same, even if the switch movement across the crossing is more frequent.

Q. If you had 50 switching movements across a crossing wouldn't it be more dangerous than one through movement?

A. It might not.

Q. So the relative quantity of danger, in your opinion, would depend on the ratio of through trains to switch trains?

A. Or rather, in my opinion, to the speed of the movement.

Q. If a man is going up a crossing which is approached by a stiff highway grade and kills his motor engine on that crossing, which is in front of a switching movement, he is apt to be damaged, is he not?

A. That would depend on how far the engine was from the crossing at the time the locomotive engineer saw the man and the speed at which the engine was moving and the load the engine was pulling.

Q. Have you given any consideration to motorist- who endeavor to beat switch engines across crossing?

A. Not especially.

Q. You have never been in the Claim Department of a Railroad?

A. No, sir.

Q. You are not familiar with the number of accidents that occur in a year caused by motorist- that do attempt to beat slow moving switch engines?

A. The only information I have is from publication giving the many that are killed at specified switches.

Q. A good many people are killed at crossings every year?

[fol. 629] A. Yes, sir.

Q. You said yourself that a crossing which was approached by a stiff highway grade was more dangerous than an ordinary grade crossing?

A. One that is approached with no degree is less dangerous.

Q. What is the rule in regard to the movement of trains through yards?

A. You mean the regular scheduled trains?

Q. Any trains?

A. Within the yard limits they are supposed to look out for engines moving, yard engines.

Q. Are there any rules in regard to the movement of the engines being under control?

A. The rule requires them to be under control and prepared to stop quickly, in case of an approaching engine.

Q. Would that occasion any reduction in speed at which the trains moved through the yards as compared to the speed they moved on the track outside of the yard?

Q. The movement of the train is generally regulated by the distance that the locomotive engineer can see the signals he gets, if he is in the yard, there is no arrangements for signals, if the track is clear he doesn't slow up. There are places where the trains run at high speed through switch yards, in the case of the big passenger trains.

Q. And that would require an extra locking device, which is very expensive?

A. Too expensive to consider in this case, but I was answering your hypothetical question.

[fol. 630] Q. So the effect of extending the yard board in a case of this kind would be necessarily to retard the movement of trains coming through that yard?

A. In my opinion an arrangement could be made with the existing facilities that would not materially detract from the speed of the trains on that portion of the track.

Q. How far would the yard board have to be moved, in your opinion?

A. The yard board should be moved one thousand feet to the east from the junction.

Q. One thousand feet to the east from the junction, and how far is the junction from the yard board at present?

A. At present?

Q. Yes?

A. It is probably one thousand feet.

Q. And is you moved it one thousand feet from the junction, would that yard board be on a curve?

A. It ought to be near the east end of the curve, east of the junction.

Q. If you put it near the east end of the curve east of the junction, wouldn't it be materially more than one thousand feet east of the junction, look here on the map and tell me that?

A. I think if the yard board was set one thousand feet east of the junction that it would be visible probably a half mile before you got to it.

Q. You haven't made any survey of it, you are seeing that from the map?

A. I am taking that from the map primarily, basing that on the map, primarily.

[fol. 631] Q. Have you considered the fact that there are trees on the inside of the curve?

A. About 50 feet away from the track, yes.

Q. Can you state positively that you can see across that section for a half mile?

A. I said I thought.

Q. You are giving your best judgment?

A. I haven't measured it.

Q. If you move that yard board just one thousand feet and this is two thousand feet from its present location, how far would it be in round figures from the first switch in the Jackson yard?

A. A mile and a half or a mile and three quarters.

Q. There is no telegraph station on the A. & V. out to the east of Pearl River closer than Pearson?

A. I don't know of a telegraph station on the A. & V. at all east of the bridge.

Q. You didn't notice any the other day?

A. Do you mean in the immediate vicinity of the bridge?

Q. Yes?

A. No.

Q. Is there one there at the proposed junction?

A. No, sir, there is no telegraph station there.

Q. Do you know what the distance on the A. & V. line at Meridian is from the last turn out switch in the yard to the yard board?

A. I am not sure where the yard board is to the west.

Q. What is the distance from the last switch to the yard board?

A. I don't know.

Q. Can't you approximate it?

[fol. 632] A. No. I can't say that that track is perfectly straight.

Q. Do you know in the case of the L. & N. and the Tennessee Central, to which you referred yesterday, how far it is from the last switch in the yard to the yard board on the main line of the L. & N.?

A. The yard board of the L. & N. is between the interchange and their yards, their yard limit board.

Q. Can you give the distance from the last switch in the yard to the yard board?

A. I judge it is approximately a quarter of a mile.

Q. And you say that the interchange switch in that case is not in the yard at all?

A. No, it is not less than two miles from the yard, is my recollection.

Q. From the yard board?

A. Yes.

Q. On the Tennessee Central, how far is it from the last switch in the yard to the yard board?

A. I don't recall the location of the yard limit board on the Tennessee Central. It is a section over which I have not traveled enough to recall.

Q. In the case of the Mobile & Ohio and the G., M. & N. at Mobile, how far is the yard board in the yards on the main line of the Mobile & Ohio from the last switch in the yard?

A. I do not know.

Q. How far is the yard board on the main line of the G., M. & N. from the last switch in the yard?

A. I don't recall.

[fol. 633] Q. Have any plans been made by you, or any one to your knowledge, on behalf of the Jackson & Eastern for interchange switches at the proposed point of junction?

A. Tentative plans have been sketched, but nothing definitely decided in regard to laying out the switch at that point.

Q. Have you got these tentative plans?

A. No. I made a pencil sketch of it when I was talking with Mr. Neville about it, just sketched it off with a pencil as an engineer usually does, but nothing definite was decided upon in regard to laying out the interchange in that vicinity.

Q. Did you ever hear before yesterday of building a third interchange track especially to take care of the bad order cars?

A. No.

Q. Isn't that a rather novel method of construction, to construct a third interchange track at the last minute to put the bad order cars on?

Mr. Stone: We object to whether or not it is a novel method. Let him testify as to the facts. And we further object to it as being incompetent, irrelevant and immaterial.

Mr. Monroe: We withdraw the question.

Q. I believe you stated yesterday—Have you any plans for interchanging passengers at this proposed junction, Mr. Stacker?

A. No, sir.

Q. Would you consider this a desirable point to interchange passengers?

A. If we brought passengers down there and there was an inter-

[fol. 634] change it would be most desirable. I don't know of any prospect of any interchange of passengers. It isn't considered.

Q. In case it was undertaken to interchange passengers at that point what would you have to do?

A. Make the necessary provisions.

Q. What would be some of them?

A. We would have to make arrangements for the A. & V. to stop their trains, the A. & V. would have to stop their trains. There would have to be a platform for the passengers to get off the A. & V.

Q. Approximately how far in each direction?

Mr. Stone: We object to any testimony touching the interchange of passengers at this junction. This eminent domain proceedings does not even contemplate it.

The Court: I can't see that it would be a public railroad if it wouldn't have to prepare sooner or later for passengers, express and the United States mail, so I will overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. It is a matter that I haven't considered for a minute.

Q. Would the fact that these two roads are on a fill of approximately 10 feet at that point add to the difficulty of exchanging passengers at that point?

A. It might not. It may be that it would be an advantage in times of high water. It would be an advantage to have them up out of the water.

Q. Then you think that the high water is to be seriously considered in respect to the exchange of passengers?

A. No, I simply said it might be. It would be preferable to have [fol. 635] them above the high water.

Q. Eliminate the high water if you don't think it is worth consideration, and tell me whether the fact that each of these roads at that point are on a ten foot fill would be a difficulty in exchanging passengers?

A. My experience with the exchange of passengers and the conditions is that the extent of the conditions is directly in proportion to the amount of passengers traveling. If there was only one passenger, there would be mighty little arrangements made. If there was a crowd to take care of, to take from the trains, the amount of traffic would justify extensive preparations. I haven't considered the interchange of passengers. Frequently passengers get off of one line and have to make some little distance to take a passenger train on another line, where there is an interchange of freight between the two lines. Physical connections do not always necessarily exchange passenger and freight at the same point.

Q. Suppose they transferred passengers at this point, would the fact that there was a trestle in the track present any obstacle or difficulty?

A. None especially. Provisions could be made to extend the line of the platform and the passengers could be carried along the side of the track on this trestle.

Q. On what track?

A. The A. & V. and the J. & E. tracks there.

Q. This platform would have to be built up to a 10 foot elevation

A. This platform ought to be built a little higher than the top of the rail on which the train stands.

Q. What would be the extent of this platform on each side of the [fol. 636] junction?

A. That would depend on the circumstances.

Q. What are those circumstances?

A. The point selected for stopping the trains would effect whether or not this platform reached the trestle. My recollection is that there is a few feet between the two trestles east and west of the junction. There would be room for a landing platform of about one thousand feet long not reaching either trestle.

Q. If the train stopped in that position it would be across the junction point, and across the Dixie Highway, wouldn't it?

A. It would.

Q. How would passengers going from one train to the other, from the Jackson & Eastern to the A. & V., how would they go?

A. We haven't yet considered where the Jackson & Eastern is going to stop. We would probably have a walk or walkway provided for them.

Q. Where would the Jackson & Eastern reasonably have to stop?

A. If it was a passenger train station, it would be perfectly feasible to build a track parallel with the A. & V. main line within 65 or 70 feet of the A. & V. and if conditions warranted it that whole space could be used in there.

Q. How would you get from the Jackson & Eastern track on a track parallel with the A. & V. without going on the A. & V.?

A. Make our switch back somewhere off the A. & V. line.

Q. Just illustrate that please, on map, Exhibit "F"?

A. Where is the map?

Q. You are going to have, you say, a track parallel to the A. & V. track to be used by the J. & E. passenger train, where is it going to be?

[fol. 637] A. It is purely a hypothetical case, and I didn't say where you could have it. It could be made by turning out from the line of the Jackson & Eastern as shown on Exhibit "F" at some point which is north of where that line intersects the north right of way line of the A. & V. Railway, this track should extend towards the west.

Q. Then, would it be built over the Dixie Highway at Curran's Crossing?

A. It need not reach the Dixie Highway at Curran's Crossing.

Q. Would it be built to the north or south of your track, the track indicated on this map?

A. It would turn out of that track and extend to the west on the northeast side, towards the north and east.

Q. Will you draw that track in red on this map?

A. As a sketch here in the neighborhood of this, just sketch it.

Q. What would be the degree of the curvature as it takes out of the Jackson & Eastern?

A. The degree of the curve might be considerably changed if it became necessary to make these additional facilities. The track as it exists today is four degrees.

Q. The plan as it exists is that of a four degree curve?

A. Yes.

Q. And this red line would indicate an additional curvature of how many degrees, approximately?

A. The curve of a turn out depends primarily on the angle of the frog used in making the turn out.

Q. What is the width of the A. & V. right of way at that point?

A. My understanding is that the A. & V. has a right of way of [fol. 638] 50 feet from the center of their track.

Q. Would that track which you propose to build be built on the A. & V. right of way?

A. To build it within 65 or 70 feet of the A. & V. Railway would not necessitate putting any part of the fill on the right of way of the A. & V. Railway.

Q. If they built that track in that locality what would they have to put in between the dump of the A. & V. Railway and the dump of the Jackson & Eastern?

A. There might be no occasion for any structure to be put between these two tracks.

Q. If you did not fill in between these two banks, you would have two railroads on a 10 foot fill each with 50 or 65 feet across, that was not filled in?

A. Yes.

Q. Would you expect the passengers to cross from one fill to the other?

A. I didn't say that. You didn't exactly ask me how the passengers would get across.

Q. How would they get across?

A. They would go along the side of the track that the Jackson & Eastern asked to be allowed to connect with the A. & V. then back along this hypothetical passenger track that the J. & E. is going to build in there. In other words walk up the length of the train and walk back to the A. & V.

Q. Would there be a platform built in that case?

A. Not necessarily a platform. There should be a walkway provided of some sort.

[fol. 639] Q. You mean build the dump out far enough for a walk?

A. The walkway might be built on the dump along side of the train, or the fill might be widened on one side to provide a walk way. It is not very comfortable walking between the ends of the ties on the edge of the fill.

Q. Did I understand you to say that it would be a desirable place for the exchange of passengers?

A. No. I didn't say so. I don't think there is any possibility of passengers ever being exchanged there.

Q. To what point is the Jackson & Eastern actually built, completed its railroad down to?

A. The end of the track to where they have operations is station called Walnut Grove.

Q. How far is that from the proposed point of junction along the Jackson & Eastern proposed line?

A. It is between 35 and 40 miles.

Q. Mark the last place on the blue print, Exhibit "A" to Mr. Duffee's testimony, at which the Jackson & Eastern has rails laid?

A. I have marked on this Exhibit "A" in red a point to the south and west of the point marked Walnut Grove on the blue print as being the end of the track.

Q. Will you write opposite your red point, in red, on that map, "Present limit of the J. & E. track"?

A. I have done so.

Q. You testified that between 80 and 90 per cent of the right of way had been procured between Sebastopol and Curran's Crossing by the Jackson & Eastern. How much of that was donated?

A. I didn't separate that which was donated and that which was [fol. 640] bought, I couldn't answer that in any different way.

Q. You know that a very large portion of it was donated?

A. The major portion was donated.

Q. Can you look on this map and tell me what portion of this right of way there at Headman was donated?

A. I don't think that was donated, but I am not in a position to say definitely.

Q. You don't know, and if it was you don't know what was paid for it?

A. No.

Q. You don't know about the Headman property?

A. No.

Q. What about the Tanner property, refer to the map "F" where these names appear?

A. There is the Tanner property. I did not make the negotiations for that, but I overheard a conversation between Mr. Neville and Mr. Tanner which leads me to believe that there was money paid to Mr. Tanner.

Q. How much?

A. I am not sure. In fact the conversation was a general conversation and I think at the time that they had agreed on the price. The conversation referred to an additional opening that was to be provided there. That was the main thing in the conversation.

Q. You don't know, you couldn't swear that there was a price paid to Mr. Tanner?

A. No.

Q. Or a price paid Headman?

[fol. 641] A. No.

Q. Or to R. E. Cox?

A. No.

Q. What about E. P. Ronney?

A. I know of no payments other than the payments that I handled. I arranged for one or two of the pieces of right of way and they are the only ones that I know about.

Q. Are they in this vicinity?

A. They are further up.

Q. How far from the proposed point of junction?

A. Some little distance.

Q. Can you give the date that you conducted these negotiations for the purchase of this right of way?

A. No further than to say it was about January or February 1922.

Q. The petition of the Jackson & Eastern alleges that in this case it has expert witnesses swearing for it. Are you to be compensated for attending this Court?

A. I am.

Q. Has the amount of the compensation been fixed?

A. It has not.

Q. You are to be compensated by the Jackson & Eastern?

A. Yes.

Q. About the date of the building of this dump, can you give me the date that it was built? I am referring to the dump in the immediate vicinity there of the A. & V. Railroad?

A. I can't give you the exact date when the work was started or when the work was stopped, but it was between December 1, 1921, [fol. 642] and April 1, 1922. It stopped prior to April, 1922.

Q. You say that it stopped prior to April, 1922?

A. I am almost sure of it.

Q. Why did they stop prior to April, 1922?

A. Well, the reason given to me was that the A. & V. had refused to permit a connection, and they stopped, pending the adjustment of this matter. There was no use to make investments that would stand there idle for an indefinite period, and they couldn't use it and didn't want to build it and let it stand there.

Q. Mr. Stacker, Mr. Duffee, testified that they started out to run a line of railroad from Sebastopol to Jackson. Why didn't you run your road to Jackson?

A. Well, we run the line very close to Jackson. We considered that we would be practically at Jackson. We are going towards Jackson.

Q. Had you in mind in coming to this point anything in regard to the bridge of Pearl River?

A. The bridge of the A. & V.?

Q. Was that considered by anybody?

A. The consideration was that we would be enabled to make arrangements with the A. & V. and cross the river by the A. & V. bridge.

Q. And did that consideration weigh with you in locating the proposed junction point?

A. We wanted a junction with the A. & V. so we could use the A. & V. track and bridge, a portion of the track west of the river until we could enter Commerce Street.

Q. Why did you prefer that to going directly into Jackson yo
[fol. 643] self? On your own rails and bridge?

A. Primarily the cost of a duplicate bridge, in fact that is
only reason. We would prefer to go in on our own trackage, b
it not been for the abnormal cost of the structure.

Q. Did you make an application to Mr. H. J. Rhodes, Ch
Engineer of the A. & V. Railway on January 4, 1923, for a positi
as rod and instrument man with the engineering force of the A. & V.

A. I made an application to Mr. Rhodes for a position, but
think they called it rod man.

Q. Did you ever state to Mr. Rhodes, orally or in writing, "I a
not a graduate of any technical school"?

A. I don't think so.

Q. Did you state to Mr. Rhodes in writing in a letter dat
December 16, 1922, "I am not a graduate of a technical school"?

Mr. Stone: The witness should be shown the letter, if they ha
it in writing.

The Court: I think he should see the letter.

Q. I hand you marked Exhibit "W" a letter addressed to H. J.
Rhodes, Chief Engineer, A. & V. Railway, Vicksburg, Mississippi,
signed P. L. Stacker, Eutawville, S. C. I will ask you if that letter
was written and signed by you?

A. It was.

Q. In connection with the testimony of the witness we offer i
evidence the letter marked Exhibit "W" and if the court please
I will read the letter into the record.

"Eutawville, S. C., Dec. 16, 1922.

[fol. 644] Mr. H. J. Rhodes, Ch. Enger. A. & V. Railway, Vicks
burg, Mississippi.

DEAR SIR: I received your letter and phoned a telegram to you
today.

I hope you will not employ an instrument man before you have
interviewed me personally.

I am not a graduate of a technical school but I can do transit and
level work and keep notes so that another can plat or can plat notes
myself.

I have studied many technical subjects myself since I began work
and have managed to post myself on a number of subjects while
actually doing the work.

Should you be able to arrange transportation via Southern Ry.
Pregnals, S. C. to B'ham, Ala., ACS, Bham, Ala. to Meridian, Miss.
and thence on your own line to Vicksburg, I can come over any
time; however I prefer after Xmas as I expect to attend a family
gathering on Xmas day. If you wish to have an interview sooner I
will come on arrival of passes.

Thanking you in advance for your favorable consideration, I am,
Yours very truly, (S.) P. L. Stacker, Eutawville, S. C."

I ask permission of the Court to substitute a copy and have it marked Exhibit "W" in lieu of the original.

The letter which was read to the Court was here identified by the stenographer as Exhibit "W."

[fol. 645] Q. What are the duties of a rod man, the position which you say you applied to the A. & V. for?

A. The duties vary with various organizations.

Q. Give me the ordinary duties of a rod man?

A. Well, he acts as assistant to the instrument man.

Q. He is the man that carries the red and white stick?

A. Yes, sir.

Q. The other fellow looks through the instrument and the rod man carries the stick?

A. Yes, sir.

Redirect examination by Mr. Stone, for the defendant:

Q. A letter has just been read from you to Mr. Rhodes in which you stated that you are not a graduate of any technical school. What did you mean by that?

A. In explanation of the letter, I got word indirectly that the A. & V. Railway did not want men who were graduates, they wanted men who had engineering experience in the field. In a great many places, especially certain sections in Mississippi, there is a prejudice against the college graduate. I made the expression by saying technical school. The University of the South is not known as a technical school, they have a law course and also an engineering course, which is technical, but it is not known as a technical school. And the purpose for which the letter was written was to get employment with the department that generally looks upon the technical graduate askance.

Q. State to His Honor whether as a school it is considered technical?

A. It is not.

[fol. 646] Q. State whether or not it has a technical department?

A. It had the engineering department from which I graduated.

Q. Are you a graduate of that department of the school?

A. Yes.

Q. You said awhile ago that you understood the Jackson & Eastern was intending to make some arrangements with the A. & V. and go into Jackson over the A. & V. bridge. What is there in this eminent domain proceeding touching the crossing of the river on the A. & V.'s line?

Mr. Monroe: We object, the proceeding is in writing.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Witness: Repeat the question, please?

By Mr. Stone:

Q. State what there is, if anything, in the eminent domain proceedings about crossing the A. & V.'s line from this junction into Jackson?

A. There is nothing so far as I can see with reference to the crossing of the bridge.

Mr. Monroe: We move to strike out the question and the answer.

The Court: I overrule the motion.

Mr. Monroe: We except to the ruling of the Court.

Q. I will ask you to look at the description and see if it covers anything except an interchange point, a switch connection?

Mr. Monroe: We make the same objection, and further he is calling for a legal conclusion.

The Court: I think I have heard that description enough to know what it is.

[fol. 647] Q. Did you draw that description?

A. The description of the interchange?

Mr. Monroe: We make the same objection, and move to strike the question from the record.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Did you draw the description of the area that would be included in the construction of this connection?

A. I did draw it. I furnished that part of it to be imbedded in the document.

Mr. Monroe: We move to strike the question and answer from the record.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. You were asked about how far this line of railroad stopped short of this junction point. I want you to state to the Court what would have been done prior to this time if this injunction had not been sued out?

Mr. Monroe: We object, he is calling for an opinion.

Q. How far would the line have been built?

Mr. Monroe: We object to the question.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Going back to the proposition, if the injunction had not been sued out, state to the Court what would have been done up to this time towards the construction of this line of railroad?

[fol. 648] A. Contracts had been entered into for the construction of the grading up to the point in the neighborhood of Pelahatchie Creek.

Q. How far is that from this proposed junction point?

A. It is approximately 15 or 16 miles.

Q. It was to have been completed by what time?

A. I think the time on it was about 10 months. I am not positive.

Mr. Monroe: We object to any testimony as to contracts, and move to strike it from the record.

The Court: I sustain the motion.

Q. Then, what time, as you understood, would the road have been completed to Pelahatchie Creek?

Mr. Monroe: We make the same objection. Unless the contracts are produced we object to the testimony of this witness about the time the road would have been completed.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Mr. Monroe: We want to serve notice on the Defendant at this time for the production of the contract.

Mr. Stone: We will produce it at the proper time.

The Court: Answer the question.

A. Within 10 months from the beginning of the work.

Q. And that would have completed the work at that time, in what year?

A. During the year, 1922.

Q. State whether trains would have been operating on the road within the year 1922? If this injunction had not been sued out?

[fol. 649] Mr. Monroe: We object, as he is simply calling for an opinion of this man on a subject he is not qualified to answer, he has certainly not qualified as a prophet.

The Court: I suppose he can give his judgment, and I will overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. The plans were to put the road in operation just as fast as the embankments could be built, and without any hitch in the plans the road would have been in operation as far as Pelahatchie Creek by the end of 1922.

Q. As an engineer did you take into consideration the usual difficulties you have?

A. Taking into consideration the general lay of the land and all the conditions.

Q. State to the Court whether or not you could — reasonably expected to have in operation that length of the road in that length of time?

Mr. Monroe: We make the same objection.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. It is perfectly feasible to put that length of line of the road in operation in a year from the time the grading starts.

Q. Would there — been any necessity for this junction from the standpoint of construction of this road, if so, what?

A. It would have avoided considerable delay and expense in getting material, rails and cross ties, and the finishings of a railroad, supplies, from the general shipping points of supply, it would have enabled the Jackson & Eastern to put their construction material on [fol. 650] the ground in the same car in which it was loaded without the inconvenience of unloading it.

Q. Without this junction point or this junction how would you get your rails and other supplies to the western end of this track?

A. It would have been shipped to some point and hauled by wagon or other means.

Q. State to the Court whether or not, as an engineer, that is practical in railroad construction?

A. It is not the ordinary practice, and it is a very expensive method, and all things considered it makes it impractical.

Q. Now then, with our 10 miles of road construction, state whether there would have been any traffic to be hauled on it for delivery to Jackson from Pelahatchie Creek?

A. There would be.

Q. What kind of traffic.

A. Principally forest products.

Q. You mean lumber and timbers?

A. Yes.

Q. Well, if you had completed your road that far without this junction, state to the Court whether or not you could have handled that traffic?

A. The bulk of the traffic could not have been handled without the connection.

Q. State to the Court how you could get your construction material without that extent of the road?

A. It would be a cross country haul of heavy equipment to get to it.

Q. State to the Court whether or not that is usual or feasible? [fol. 651]

A. That is very unusual and very impractical.

Q. You were asked about this place as a passenger station, for the handling of passengers, express and mail. How far is this point from the city of Jackson?

A. The junction is right close to two miles from Union Station.

Q. I didn't ask you Union Station, I asked you the city of Jackson?

A. The city limits?

Q. Yes.

A. Just outside the city limits, it is across Pearl River.

Q. How close do the city limits come to this point of junction?

A. Within a couple of thousand feet.

Q. On which side of Pearl River are the corporate limits of Jackson?

A. On the east side of the River.

Q. Take the interchange tracks between the M. & M. and the A. & V. at Meridan, and state to the Court whether or not there is any interchange of passengers, express and mail there?

A. There is no interchange of passengers, express or mail between the A. & V. and the M. & M. at Meridan.

Q. How is it handled?

A. The passengers, express and mail are brought into the city of Meridan, to the M. & M. station on 22nd Avenue and transferred across to Union Station to the other railroads.

Q. I will ask you to state to the Court whether or not this is customary?

A. That is done frequently where the railroads do not connect or unite in a union station for the transfer of passengers or other traffic. [fol. 652] That is done by a great many roads, good size- roads entering good size- towns where there is no physical connection of the two roads.

Q. How are passengers exchanged between the M. O. M. & C. and the M. & O. at Mobile?

A. That is all across the town at Mobile.

Q. What do you mean by across the town?

A. The M. O. M. & C. now the G. M. & N. has a passenger station on one side of Mobile and the M. & O. has a passenger station on the other side of town.

Q. How far apart?

A. At least two miles.

Q. How do they handle the mail and express there?

A. The mail goes into the postoffice and is re-distributed in the postoffice and the express goes into the express distributing station and there it is re-distributed.

Q. I want you to state to the Court whether or not it is feasible and practical for passengers to be transferred by and over the concrete road from this point of junction, from the place where you stop your passenger trains, over to the station at Jackson?

A. It would.

Q. How about handling the express and mail?

A. That would be the logical way of handling it, through the central office.

Q. Taking the point of contact, the close proximity to the yard, the close proximity to Jackson, where would be the practical point of make the interchange of passengers, express and mail, taking into [fol. 653] consideration the location of this switch, for the purpose of transferring cars and freight, and taking into consideration its distance from the city of Jackson?

A. The proper method of transferring passengers, express and mail from that point, the logical way would be to send it into Union Station at Jackson, or whatever place they choose, it might be a different station. The mail would be taken into the post office and routed from the postoffice in Jackson, and the express taken into the

general express office in Jackson and delivered locally or re-distributed from there.

Q. You know, do you not, the conditions prevailing here at Meridian with reference to the transfer of mail and express from the M. & M. Railroad that is going to the A. & V.?

A. The passengers are transferred from the M. & M. station to Union station.

Q. Who transfers them?

A. They effect their transfer themselves. There is no connection with the other railroads.

Q. Who transfers the express?

A. The express companies handle the express.

Q. Who transfers the mail?

A. The postoffice.

Q. What difficulties do you see, if any, in the handling of the mail and express and the transfer of passengers in the manner just indicated by you?

A. There is no difficulty, it is common practice.

Q. Now, you were asked if the shifting of this switch board, yard board, you were asked about that, and I believe you stated that it ought to be changed to a distance about one thousand feet east of [fol. 654] the junction?

A. Approximately so, yes.

Q. Then you were asked to state how far that board, at that place, could be seen and I understood you to say a half mile?

A. That is my opinion.

Q. I will ask you to state to the Court how far that board can be seen going east from Jackson as you approach where it is now located?

A. No further.

Q. I will ask you to state to the Court how far it can be seen by trains going west, towards Jackson?

A. No further.

Q. What effect would moving the board to the point east have as to the distance the board could be seen?

A. It wouldn't change the difference, but the seeing of the yard limit board is not important.

Q. In its present location can it be seen any greater distance than it could be seen if it were moved?

A. In its present location it can be seen no further.

Q. You were asked a great many questions about the position of trains with 50 or 60 cars in them that were required to stop at this point and do switching. I will ask you whether or not the difficulties suggested by counsel would be realized if a switch engine went out from the yard after these cars?

A. No.

Q. And delivered the cars to the Jackson & Eastern?

A. No.

[fol. 655] Q. He fixed these trains at 50 to 60 cars, do you know how long the average local train, freight train is, of the A. & V.?

A. The length of local freight trains vary considerably, at times

they might be 50 cars, or 60 cars, but I don't know the average length of local trains on the A. & V.

Q. Taking into consideration the proximity of this switch point to Jackson, and taking into consideration the proximity to the A. & V. yards in Jackson, which method would good railroading require in making this switch, the method by use of trains, or switch engines from the yard?

A. Considering all the conditions it would be better to handle the interchange with switch engines from the yards.

Q. State to the Court whether or not that is feasible and practical under the conditions there?

A. It is.

Q. Well, you were asked if you were ever a member of an operating crew and you answered that you never were. The point I want to get before the Court is this, whether or not your training, your experience and your observation as a railroad civil engineer qualified you to know how it should be done?

Mr. Monroe: I object to the question, he is just asking the man if he is an expert, that's all.

Mr. Stone: I asked him if he knew what ought to be done from his experience and observation.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. It is necessary in constructing anything to be informed as to the use to which the structure is to be put in order to construct [fol. 656] it in the way in which it is going to be used. The movement of trains has to be taken into consideration in the construction of railway tracks, and the method adopted in effecting the movement is also a consideration, even if it does not involve the actual training of one's self, yet it does require a knowledge of the movement to be made.

Q. Now, then you have just stated that you do know how they should be made, now I want to state to the Court whether or not, from your experience, you know how they would be actually made in isolated cases?

A. Generally interchange is handled by yard engines.

Q. I ask you if you are familiar with the method of their handling?

A. I am.

Q. You were asked about the nature of the soil that went to make up the dump of the Jackson & Eastern, and you stated that it was alluvial soil and subject to erosion. Suppose that track should give away because of the water pressure against it, what effect, if any, would it have on the A. & V. Road?

A. I can't see that it would have any effect on the A. & V. road.

Q. I understand you to state, also, in answer to a question, that it was possible to run a line from Lucknow to Pearson skirting the foot hills, I understood you to say that it was possible. I will ask you to state to the Court whether or not it is feasible and practical to do so, taking into consideration the terminus point of the railroad and other conditions there?

Mr. Monroe: We object for the reason that this man has testified that he made no survey for the purpose of ascertaining that point [fol. 657] and further object to that part relative to the terminus at Jackson, because the witness has already testified that he understood they wanted to get as close to the A. & V. bridge as possible.

The Court: I will let him answer.

Mr. Monroe: We except to the ruling of the Court.

A. The logical line would not be to skirt the foot hills and go to Pearson. I made the statement that it was possible, but not that it was the practical line or logical line.

Q. What have you to say with respect to the question of good railroading, taking into consideration the conditions there?

A. Including all the conditions there would be no reason to make the location around these foot hills and turn east and diverge the line further east and south of where it is now.

Q. If you got into the foot hills would you be out of the swamp?

A. It is possible to keep out of the overflow water by being high enough on the hills.

Q. Mr. Monroe suggested here that you had not surveyed the territory. You said something in answer to one of his questions about a reconnoiter through there. State to the Court what observations you made?

A. In going down to the southwest from a point up in the neighborhood of Tuscameta Creek, which is the highest point we reached to the north, I took in a strip of land that would vary from 8 to 6 miles wide, looking for the best location for a railroad.

Q. How were you traveling.

A. I was on foot, all except two miles. I road across two miles, and by the process of elimination I could find a feasible place for a road, so the place for running a railroad was narrowed down [fol. 658] by taking the slope, the distance in the elevations, and the approximate grading that would have to be done, and with this I determined the strip through which the instrument survey should be run. There was a compass line run with my surveyor's compass which confined it to a still narrower strip.

Q. Look at the Map Exhibit "A" and locate Pearson?

A. Here is Pearson. (Ind.)

Q. Put your pencil on it so that the Court may see it?

A. It is at the point on which I now hold my pencil.

Q. Now locate Brandon?

A. The town of Brandon is located here. (Ind.)

Q. Locate the station?

A. The station of Brandon is along the line of the A. & V.

Q. Can you state as an engineer, why the A. & V. road did not run straight from Brandon to Pearson, but instead made a curve to the south?

Mr. Monroe: We insist that it is entirely irrelevant.

The Court: I sustain the objection.

The Court: We will now adjourn until nine o'clock A. M., Wednesday August 22nd, 1923.

[fol. 659] Wednesday, August 22nd, 1923—nine o'clock a. m.

P. L. STACKER resumed the witness stand.

Re-direct examination by Mr. Stone.

Q. Mr. Stacker, you were asked on cross examination if you had the option of placing a switch on a curve or on a tangent which you would take, and also, if you had the option of placing a switch on a fill or at a grade, which you would take, I will ask you this, if you had the option of building a railroad without curves, without fills, and without switches, or one that had them, which would you take?

A. I would take the one without curves, and without switches between stations and without fills.

Q. I will ask you, whether the ideal in railroad construction has ever been attained, and if so, by what road?

A. I don't know of any railroad that has reached the ideal in railroad construction.

Q. You were interrogated at length about the necessity of slowing down trains in order for the A. & V. Railroad to accommodate itself to this switch at this junction. I will ask you if you know of a point between the River and Pearson where a slower speed could be maintained to greater advantage than the one at the point of junction here sought, if so, where that point is?

A. I don't believe there is a point between the River and Pearson where it would be more advantageous to slow down than at the location selected for the proposed junction.

Q. What is it that makes it advantageous to slow down under [fol. 660] present conditions at that point?

A. The presence of the highway crossing, where there is considerable traffic during certain parts of the day that makes it advantageous to slow down there.

Q. You were asked the hypothetical question as to what effect a wall of water three feet high would be, against the side of the Jackson & Eastern embankment, towards the river, with no wall of water on the other side, what the effect would be on the Jackson & Eastern track, and I understood you to testify that you couldn't conceive of a wall of water coming in against that track three feet high. I will ask you to state if you made any preliminary investigations to ascertain the rapidity of the rise of Pearl River after its water got out of the banks?

A. I did.

Q. During these periods of overflow?

A. I did.

Q. What did your investigations reveal to you?

A. That the usual rate of rise after the water flooded the bottoms was about six inches per day.

Q. You mean 24 hours in a day?

A. Yes.

Q. I believe you stated that you were there during one period of floods?

A. In 1922 I was there during that flood period.

Q. Were you there during the period of the rise of the River?

A. Towards the latter part of the rise. I was there when it started out of its banks. I was not there when it first began to rise.

[fol. 661] Q. The point I want to ask you about it the rising after it got out of the River banks, state whether or not you had occasion to observe and did observe the rapidity of the rise after it began to overflow the banks?

A. I observed in 1922, and that was when I stated that the rise was about 6 inches in 24 hours.

Q. Why is it that wall of water couldn't stand three feet high on the side of this dump towards the river with no water on the other side, you said you couldn't conceive of such a condition?

A. There would be a tendency to even up the height through the openings provided under the railway.

Q. I will ask you to state to the Court whether or not the openings provided for in the Jackson & Eastern track from Hog Creek back to the proposed point of junction are sufficient to permit an evening up of the walls of water on each side of the embankment?

A. There are. There would be a slight difference in the elevation, of course, but no such condition as suggested.

Q. If you got the openings where the water was exactly the same level on each side of the embankment, what would be the condition of the water?

A. If it was exactly the same, it would be stationary.

Q. Suppose the height of the water on the side of the embankment to the east of the river was even two inches lower than the height of the water on the said — of the embankment next to the river, what would you say?

A. That the water was two inches lower on the east?

Q. Two inches lower on the east side?

[fol. 662] A. That there was a rapid flow through the openings.

Q. How rapid?

Q. The flow would run very much faster than the water runs in the streams around there.

Q. That would be a two inch flow in what distance?

A. It wouldn't exceed 25 feet.

Q. That would make what amount of flow in the course of a mile?

A. I believe I figured it in miles.

Q. That is the flow per mile?

A. Approximately 25 feet.

Q. What is the approximate flow of the river per mile as it is?

A. I do not know. However, it is not rated as one of the swift running rivers.

Q. Do you now what flow it takes to make a swift running river?

A. One half foot per mile.

Q. A comparison has been drawn here by counsel on your cross examination of the openings between the Jackson & Eastern and the A. & V. How much do the openings under the A. & V. take care of this water exceed the openings in the Jackson & Eastern, if any?

A. The openings in the A. & V. that handle the overflow of the River between the proposed junction and the high ground east occur within approximately a mile and a quarter and total approximately 1,100 feet. The openings would be equivalent to or in the neighborhood of 16 or 17 per cent. The openings in the Jackson & Eastern between the junction and the upper point where the overflow water would flow east of the Jackson & Eastern——

Q. Hog Creek?

[fol. 663] A. Yes. The total average, according to Mr. Duffee's addition the openings are 512 feet, and from that same point up to and including Hog Creek it is 1,050 feet. That would represent possibly less than four per cent of openings in that distance. However the difference between 1,050 and 11 is only 50 feet, the difference in the total openings.

Q. How does the A. & V. cross that valley, does it go up and down with the stream, or across it?

A. The general direction of the A. & V. is approximately at right angles to the river, and the general direction of the Jackson & Eastern, it is not exactly parallel with the stream, but it is up the valley.

Q. How would the Jackson & Eastern dump be built, in what direction, with respect to the overflow water?

A. It is longitudinal, however, not parallel with it, but in a general longitudinally direction.

Q. Running in a longitudinal direction where would the overflow waters from the river first strike the embankment of the Jackson & Eastern?

A. In the neighborhood of Neely Bayou or Neely Creek.

Q. Would it strike the embankment at a point of depression or elevation?

A. Neely Creek runs through the last opening in the generally low area. The low ground runs fully to the river in the neighborhood of Neely Creek.

Q. When Neely Creek strikes the Jackson & Eastern embankment, is it in a depression or on a level?

A. It is at a depression.

[fol. 664] Is there an opening right there?

A. There is.

Q. The first water that strikes the Jackson & Eastern, what becomes of it?

A. The first high water passes across to the east of the Jackson & Eastern and flows to the low ground lying between the Jackson & Eastern and the foot hills.

Q. To the east?

A. Yes.

Q. And where is the next point where the rising water strikes the embankment?

A. The next of any consequence is at Hog Creek, then there is a minor one in there, Prairie Creek.

Q. What becomes of the water?

A. It passes on through and goes into the area east of the Jackson

& Eastern embankment, between the Jackson & Eastern and foot hills.

Q. During all the time from the beginning of the overflow as the river rises up to the time that the rise of the river strikes the Jackson & Eastern dump from the point of intersection to the concrete highway, what will have to become of the water above there that has been coming in there against the embankment?

A. It would have to flow to the lowest land and will probably reach the concrete road before any water backs out of the river from a point opposite the junction of the concrete road and the J. & E. will reach there.

Q. I want you to explain to the Court what the percentages of openings in the Jackson & Eastern embankment has to do with the [fol. 665] drainage capacity of it?

A. As I stated while ago, the percentage is misleading, in that the same amount of opening in one mile of fill would bear a less relation than it would in two miles of fill. The A. & V. have within a mile and a half, approximately a mile and a quarter 1,100 feet of open water way; in the Jackson & Eastern, in something like two miles they have approximately 1,050 feet of open water way, the percentage of the open water way in the Jackson & Eastern track would be, I think, less than four per cent, and the percentage in the A. & V. track would be in the neighborhood of 16 per cent, about four times as much opening as the Jackson & Eastern, whereas the Jackson & Eastern length of fill is four times as great, making the actual openings nearly the same thing.

Q. Here is a little figuring that I have drawn on this piece of paper as being the water course, and the little line which I drew at right angles to that, let that be the embankment. Suppose you want to have openings enough in this embankment to permit the water through them, this line is drawn at an angle say of 30 degrees and this line runs at an angle say of 75 degrees. Would it require any more openings in this embankment, (Ind.) to permit the water to go through that it would in this one down here? (Ind.)

A. No.

Q. How much longer is this opening here than the one that goes at right angles across?

A. The opening to carry the same water would be the same in each case, although the one here is considerable longer than the one running directly across the stream. That length would have nothing to do with the amount the actual amount of open water way.

[fol. 666] Mr. Monroe: I ask that the drawing that has been testified about be introduced in evidence, if the Court please.

The Court: You may have it identified.

Mr. Monroe: We ask that it be identified as Stacker X.

The diagram was then and there handed to the stenographer and was so identified.

[fol. 667] Recross-examination by Mr. Monroe:

Q. Mr. Stacker, I wish you would take this diagram, "Stacker X" I have drawn on it between the lines A & B a line substantially parallel, I am trying to make it parallel, to the line which was drawn on there by Mr. Stone in the redirect examination, and I will ask you whether, if you had a flood of water going down the tunnel which has been indicated by Mr. Stone and it passed under the embankment between the lines C & E, and if you thereafter built an embankment of equal height across that tunnel on the line A & B, the effect of building that embankment would be to increase or decrease the height of the water at the point A & E in the case of a flood?

A. If the opening through the line A B was sufficient to take care of the flood that would naturally move towards the direction of B across the open area, I don't believe it would increase the flow passing the opening E & A.

Q. What would be the effect of that embankment upon the current going down there, would it deflect the current in any respect?

A. If it was lower to the right of the line A B the effect would be to draw from the current.

Q. In the course of the river you have north and south that embankment is built obliquely to the northeast and southwest direction, the effect of the embankment will not be to deflect the current in a northeasterly and southwesterly direction?

A. If the embankment is built without any openings it would deflect the current in that direction.

Q. Indicate the direction with an arrow in this diagram.

[fol. 668] A. In the direction of the arrow I have made.

Q. Now suppose you put a line of piles down the stream running due north and south, and that line of piles runs northeast and southwest, will not the line of piles deflect the current into this direction, northeast and southwest?

A. That would depend on the position of the piles put there. If they were put substantially in the direction of the line A B it will not deflect the current if they are placed sufficiently far apart. If they were put sufficiently close together they would.

Q. Suppose they were put a pile then an opening the width of a pile, then a pile then the opening the width of a pile, would that deflect the current?

A. Along the direction of the arrow, yes.

Q. What would be the effect of the deflection of the current upon the velocity of the current?

A. I really couldn't say, there are so many elements entering into a hypothetical question, that it really, unless all of these elements are stated, it would be impossible to make an answer. There are conditions under which it might throw a considerable amount of water, therefore, increase materially the velocity, and there are conditions under which it might not throw hardly any water, might not increase the velocity.

Q. The deflection of a current in the river as a rule increases the velocity to the place to which that current is deflected?

A. Not necessarily.

Q. I didn't say necessarily, I said as a rule?

A. I don't think so.

Q. You don't think, then, that to change the current which [fol. 669] normally going down the west bank of this stream that is drawn on the diagram, along here, (Ind. on the diagram) if there was deflected into that same channel the current coming down the line of piles along your arrow, thereby adding two currents coming between the points A & E would increase the velocity of the current between these two points?

A. If the water below the line C D maintained a substantially lower level it would increase the velocity.

Q. Did I understand you to say that you didn't know what the flow per mile in Pearl River was at this locality?

A. I do not.

Q. Did I understand you to say that Pearl River was not rated as a swift flowing stream?

A. I said that Pearl River was not listed as one of the swift flowing streams.

Q. You don't know what the flow of Pearl River is at this point?

A. I do not.

Q. Has the angle at which an opening confronts a current have anything to do with the efficiency of the opening?

A. It has.

Q. An opening which is 100 feet wide at right angles to a current is more efficient is it not than an opening which is 100 feet wide and which has a much longer angle to the current?

A. If there is no angle to the flow there would be.

Q. If in the illustration "X" we have a current running due north and south and we have in the lines C D an opening of 100 feet, would that opening be more or less efficient than an opening of 100 feet on the line A & B?

[fol. 670] A. Where both openings lie in the flow in the same direction, if there was no difference in the tendency of the flow the opening at right angles would be more efficient than the one turning obliquely.

Q. The efficiency of the opening in line A B would be the length of the cross section which I have indicated by the letters G H, in case the current was due north and south?

A. I don't think so.

Q. It is not the components representing the cross sections which raise the current?

A. No, sir.

Q. Sir?

A. No, sir.

Q. You are just as certain of that as you are the rest of your testimony?

Mr. Stone: We object.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. I have every reason to believe that it is not, unless there is no tendency to flow towards the right of the line A B.

Q. I asked you the specific question predicated on the flow north and south, do you desire to correct your answer?

A. No.

Q. You stated that you made an investigation to determine the rapidity of the rise in the water in Pearl River bottom in this locality, what was the nature of that investigation?

A. They were inquiries made of people who lived along the valley.

Q. From whom did you make these inquiries?

[fol. 671] A. Mr. Daniels, J. H.

Q. What is his address and occupation?

A. He is a sort of store keeper at Liberty Church.

Q. From whom else did you make inquiries?

A. Mr. Redfern.

Q. What is his occupation?

A. Farmer.

Q. Does he farm in that valley?

A. Yes.

Q. From whom else did you make inquiries?

A. I don't remember the names of the others, but I remember these specifically because they are both men that have lived there for some time.

Q. Do you recall the names of any other people from whom you made inquiries?

A. I don't recall any others now. I did talk with a man named Jones living south of Pelanatchie Creek, but I am not sure he made any reference to the River, it is probable that his talk was confined to Pelanatchie Creek, as to when the overflows would occur, the general direction of the overflows, during the time he lived there in the neighborhood.

Q. Do you wish to leave the impression on this record that the increase in the height of the water in that valley is uniform in the various floods?

A. No, it is not uniform.

Q. Why was it you said that it would increase about six inches per 24 hours?

A. This is the usual rate of rise.

[fol. 672] Q. You mean in normal high waters it would rise six inches in 24 hours?

A. That occurs frequently, that was the impression that I got from the people living in there. I was in there once, and it never did get that fast in 1922. I watched it from day to day.

Q. You never was in there in very high water, the '22 flood was not very high?

A. No, sir, it was not.

Q. It is a fact, is it not, that the rate of rise per day would vary with the intensity of the flood?

A. It will vary with the intensity of the flood and the stage of the river.

Q. What do you mean by that, exactly?

A. As long as the river is confined to its bank it rises much more rapidly, at the rate of a foot an hour, but after it spreads out over the low ground the rate of increase in height is very much slower.

Q. Then the rate of the rise would vary directly with the intensity of the flood?

A. No, as it rises there is a greater overflow, and the rate of rise could consequently decrease as the river arose.

Q. When it reaches its high water channel then the rapidity of its rise varies directly with the intensity of the flow?

A. Yes, varies with the intensity of the flood.

Q. Then there would be no such thing as uniformity, take a tremendous rain fall the rise would be much more rapid, and if you had a less rain fall it would be a less rapid rise, that's true?

A. Yes, sir.

[fol. 673] Q. So it is not your intention to fix any six inch rise in 24 hours as an invariable measure of the rise of the water in that valley, is it?

A. I don't think it would be fixed as an invariable rise, but the people from whom I got the information gave that to me, but they probably never actually measured it, but judged from the point along the road on fences and trees.

Q. Where is this proposed point of intersection, in what county?

A. Rankin.

Q. In what county is Jackson?

A. Hinds County.

Q. The boundary between the counties is Pearl River in this location?

A. That is my information.

Q. Is coupling on a curve as easy and as uniformly successful as coupling on a tangent?

Mr. Stone: We didn't ask him anything about that in our re-direct examination.

The Court: Let him ask him, and let the witness answer.

Mr. Stone: We except to the ruling of the Court.

A. I don't know.

Q. Is coupling when the tracks are on two separate plains as easy and as successful as coupling when the tracks are on the same plain?

A. I don't know of any instance where the cars standing on one track are coupled to the cars on another track.

Q. You haven't answered my question?

A. I don't think it is possible to couple cars standing on different [fol. 674] tracks, in opposing plains.

Q. What would be the main tonnage moving on the Jackson & Eastern?

A. Principal tonnage?

Q. Yes?

A. Lumber I should think.

Q. When, if you know was the right of way of the Jackson & Eastern in this locality acquired?

A. I am not sure when they began acquiring the right of way, but I am confident that it was done during and just prior to the time that Mr. Duffee made the survey. I am reasonably sure that some was acquired in advance of the survey and the other was acquired since, up until 1922.

Mr. Monroe: I would like to give notice for them to produce their right of way deeds, give notice to the Jackson & Eastern that they produce their right of way deeds in this locality at the hearing in November.

Q. Have you made any plans, seen any plans or discussed any proposed plans for the location of the Jackson & Eastern across Pearl River Valley at a point other than the point indicated on the sketch "F"?

Mr. Stone: That was gone into at length.

The Court: He may answer.

A. No.

Q. If you have your profile with you let me see it?

A. All right.

Q. I would like for you to tell me from your profile what is your maximum grade between Sebastopol and the proposed point of junction?

[fol. 675] A. This profile will not show the lines as far as Sebastopol.

Q. How far does it show it?

A. It shows it to a point opposite Fannin, in Fannin neighborhood.

Q. What is the grade?

A. The maximum grade is one per cent.

Q. From Fannin back to Sebastopol what is the grade?

A. That is the maximum grade, one per cent.

Q. I would like for you to re-state for me, please, every objection you have to a connection on a tangent of the A. & V. Railroad between Pearson and the proposed junction point?

Mr. Stone: I think that counsel has already gone into every objection on his cross examination.

The Court: It seems to me that this was gone into with this witness.

Mr. Monroe: I will make it brief.

The Court: Then go ahead.

Mr. Stone: We except to the ruling of the Court.

A. The objections to going to some other point than the one selected?

Q. On a tangent I said?

A. There is no objection to a tangent, but the point we wanted to go, the idea was to get as close to the River as we could.

Q. You said that there was a tangent west of Pearson?

A. I think there is.

Q. Please state what objections there are to going to that tangent?

A. It would be in a different direction from which we con-
[fol. 676] templated building the road.

The Court: That question has certainly been gone into before.

Q. Are there any other objections to it?

A. We would have had to gone over a rough country to get to it.

Q. Are there any other objections?

A. We didn't consider making the connection there. I don't understand what objections you could refer to. It was not the point we intended to go to and we didn't intend to get to a point and turn away, turn away from Jackson instead of towards Jackson.

Q. I want you to give me everything you have got in your mind in the way of objections to going to that tangent, give them fully?

A. The principal objection was that our objective point was Jackson.

Q. Have you stated all of your objections to it?

A. I think so, yes, sir.

By Mr. Stone:

Q. State whether or not there would be any additional cost attached to the maintenance?

Mr. Monroe: We object.

The Court: I sustain the objection.

Mr. Stone: We except to the ruling of the Court.

Q. What have you to say with respect to the maintenance?

A. We would have to increase the length of the line and consequently that would be an increase in the maintenance cost.

Q. What have you to say about the cost of construction?

A. It would increase the cost of construction.

Q. What have you to say about the cost of operation?

[fol. 677] Mr. Monroe: We object to all these questions as leading.

The Court: Don't lead the witness.

A. An increased length of track would imply an increased length of operation, and that would mean an increased cost.

Q. What have you to say of the earning capacity if there is an increased cost of construction, and an increased cost of maintenance, and an increased cost of operation?

A. That would decrease the earnings of the road.

Q. On this map "X" that was handed to you, I will ask you to state in what direction the waters strike the Jackson & Eastern dump whether running down the track or at right angles?

A. The flow of the water when it strikes the Jackson & Eastern fill is generally at right angles to the fill.

(Witness excused.)

[fol. 678]

STIPULATION CONTINUING CAUSE

By Mr. Monroe: Agreement: It is agreed by the parties that the further hearing of the motion to dissolve the injunction be continued to the November Term of the Court, and at the November Term of the court the case shall be set down for final hearing upon the bill and answer and the motion to dissolve the injunction, and suggestion of damages, and that the testimony already taken on the motion to dissolve shall be used by the parties in that hearing, and that each party shall have the right to introduce such further testimony as they may desire, and the usual order of proof will be followed, namely, the complainant first, then the defendant.

End.

[fol. 679]

[Title omitted.]

STENOGRAPHER'S CERTIFICATE

I, Bettie Hosey, official court stenographer for the Second Chancery Court District of the State of Mississippi, do hereby certify that the above and foregoing 517 pages of transcript contain a full, true and complete copy of my stenographic notes as taken by me on the trial of the above styled cause.

Witness my signature this the 19th day of October, 1923.

Bettie Hosey, Stenographer.

[fol. 680] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

[fol. 680₂] COLLOQUY BETWEEN COURT AND COUNSEL

By Mr. Monroe: We want permission to get the testimony of Mr. Durham, who is now in Washington and cannot be here at this hearing.

The Court: You can do that.

Mr. Neville: And we want the privilege of cross examining the witness.

Mr. Monroe: We are going to get Mr. Durham's testimony, deposition, and I tell the Court now that I am going to bring him back to testify if I can, in addition to taking his deposition. We are going to take his deposition and also bring him here for the trial if we can, if we cannot, we will rest on the deposition.

The Court: Then they can cross him.

Mr. Monroe: And we have the privilege of putting on other witnesses to rebut their testimony?

The Court: Of course, but I understand that you will now put on all your testimony, except the absent witness, Mr. Durham, in your direct case.

Mr. Monroe: Yes, we will do that.

Mr. Stone: That is all right with us, if we don't have to put on our testimony until they have rested.

The Court: I understand that, but they will have the right to put on witnesses in rebuttal.

Mr. Stone to Mr. Monroe: Are you going to hold back any of your witnesses?

Mr. Monroe: No, sir, I am going to put on all the proof I have here.

The Court: You may proceed with your evidence.

[fol. 680b] Mr. Monroe: Counsel for the Complainant introduces and asks to have filed in evidence the testimony of the witnesses introduced by the Complainant on the hearing of the motion to dissolve the injunction, in August, 1923, we offer their direct and re-direct testimony.

We also offer the documents in evidence that were offered by the complainant at that time.

Mr. Neville: The Defendant offers the cross examination and the re-cross examination of the witnesses introduced by the complainant at the hearing in August, 1923.

[fol. 681] W. W. HAYDEN, having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name, residence and occupation?

A. W. W. Hayden, engineer of the firm of Hayden & Young, New Orleans, La.

Q. What experience have you had as an engineer?

A. Something like 40 years experience.

Q. Will you give your experience in a general way to the Court?

A. Well, I have been locating engineer on the Y. & M. V. Road.

Q. What do you mean by locating engineer?

A. Locating a line of railroad for the purpose of construction.

Q. Proceed with the statement of your experience?

A. I was division engineer of the B. & M. R. Railroad in Nebraska, and locating engineer of the Frisco, and I was division engineer of the M. J. K. C. Railroad, and locating engineer of the Missouri Pacific Railroad, and I was locating engineer of the New Orleans & Great Northern Railroad, and I was locating engineer of a traction company in Memphis, and I was locating engineer of the Texas-Oklahoma, and I was valuation engineer of the V. S. & P. and the A. & V. Railroads, and I was pilot engineer—

Q. On what road?

A. About 18 months for the A. & V.

Q. That has terminated?

A. Yes, sir, several years ago.

Q. Continue?

A. I was pilot engineer for the M. K. & T., and as pilot engineer [fol. 682] I made various and sundry reports for the different roads.

Q. What do you mean by a pilot engineer?

A. I was pointing out the property to the government so that they would get a fair estimate of what was being done, and all that had been done.

Mr. Stone: We don't understand the witness.

A. A pilot engineer represents the railroad's interest in federal valuation, they point out the property to the government engineer, this is done particularly in the rock countries to see that the railroad company's property—there is a proper classification, and everything is put down in the inventory.

Q. Mr. Hayden, I show you a map marked Exhibit "A" to Mr. Duffee's testimony in this case, and I ask you if you will examine that map and state whether or not you are familiar with the topography of the line beginning with the bridge of the Alabama & Vicksburg Railway Company over Pearl River immediately to the east of Jackson, Mississippi, and extending out to and beyond Pearson, Mississippi, and the topography of the proposed line of the Jackson & Eastern extending approximately from Lucknow down to the proposed junction with the A. & V. Railroad, and also the topography of the country between the existing line of the A. & V. and the proposed line of the Jackson & Eastern at these points?

A. Yes, sir.

Q. Have you made any study of the topography of that territory with a view of determining the feasibility of a line of railroad from the neighborhood of Lucknow on the Jackson & Eastern to a point in the neighborhood of Pearson on the A. & V.?

[fol. 683] A. Yes, sir.

Mr. Stone: We object to that testimony for the reason that it is incompetent, immaterial and irrelevant. It is undertaking to change a fixed line and make an entirely different and separate line, and we submit it is incompetent.

The Court: I will overrule the objection.

Mr. Stone: We except to the ruling of the Court.

By Mr. Monroe:

Q. I wish you would please state what you did in order to complete the study which you have referred to?

A. I made an instrument survey of it. The survey was made under the direction of Mr. Durham and myself.

Q. What Mr. Durham?

A. Former chief engineer of the Southern and now Director of Claims for the Interstate Commerce Commission, Washington, D. C.

Q. The Interstate Commerce Commission or the United States Railroad Commission?

A. United States Railroad Commission, yes, sir.

Q. Have you prepared a blue print showing the conclusion reached by you in the matter?

A. Yes, sir.

Q. I hand you, marked "Hayden 'A' Exhibit 'Y-1,'" which is a

blue print, and I will ask you if that is the blue print to which you refer?

A. Yes, sir.

Q. Will you hand that blue print to the stenographer and let her identify it as Exhibit "Hayden 'A,' 'Y-1'" to your testimony?
[fol. 684] A. I will.

The blue print was handed to the stenographer and it was then and there identified as "Hayden 'A,' 'Y-1.'"

[fol. 685] Q. I notice on the blue print "Hayden A, Exhibit 'Y-1,'" which you have had marked, a yellow line which begins in the neighborhood of mile post 55 on the proposed line of the proposed line of the Jackson & Eastern Railroad Company and ends in the general neighborhood of mile post 91 on the A. & V. Railway Company's line. State to the Court what that yellow line, what these two yellow lines represent?

A. The yellow lines represent a practical location between the two points.

Q. A line of what?

A. A railroad line as suggested.

Q. Will you mark on this map "Y-1" the figure one where that suggested line of the Jackson & Eastern Railroad is laid out by you, where it leaves the proposed line of the Jackson & Eastern as laid out on the Jackson & Eastern map? Put that figure one in red?

A. I have done so.

Q. Mark with a figure "2" the point where the first suggested line of re-location of the Jackson & Eastern strikes the line of the A. & V., and mark with a figure "3" the point that the second suggested line of the Jackson & Eastern strikes the existing line of the A. & V.?

A. I have done so in both cases.

Q. Please state to the Court whether or not the suggested line for the re-location of the Jackson & Eastern between the points "1" and "2" is or is not a practical and feasible location for a railroad line?
[fol. 686] A. It is.

Mr. Stone: We would like for the attorney not to lead the witness, but let him state the facts, not a conclusion of what the facts are.

The Court: Don't lead him, Mr. Monroe.

Mr. Stone: We move to exclude the question and answer.

By Mr. Monroe:

Q. Please state what the facts are in regard to the suggested line between points one and two on the blue print?

A. The facts are as follows: The faint white lines, the lines effecting the elevation, taken every 100 feet and oftener——

Q. Wait just a minute——

Mr. Stone: We object to him interrupting the witness. Let him go ahead.

Q. Put a figure "4" at the point where the faint white line leaves

the Jackson & Eastern proposed line, and a figure "5" where the faint white line touches the A. & V.

A. Four and Five, I have done so.

Q. Continue with your answer?

A. Using that faint white line marked on the map, and the preliminary line "A," used that as a base line, and at intervals of one thousand feet measured the distance and the elevation was taken, and from this we got a profile of the suggested line.

Q. Have you laid off that profile on a blue print?

A. Yes, sir.

Q. I hand you a blue print, marked Hayden "B," Exhibit "Y-2," and I ask you if that is the blue print to which you refer?

A. Yes, sir.

[fol. 687] Q. Please hand that blue print to the stenographer and let her identify it as "Hayden 'B,' Exhibit 'Y-2.'"

The Exhibit was handed to the stenographer and it was then and there so identified.

Mr. Monroe: In connection with the testimony of the witness we offer in evidence the two blue prints, respectively, "Hayden 'A,' 'Y-1'" and "Hayden 'B,' 'Y-2.'"

Mr. Stone: We object to the introduction of the maps, because it is simply an effort to lay out a different line from the line already run and established by the Jackson & Eastern, and because it is incompetent, irrelevant and immaterial.

The Court: I overrule your objection.

Mr. Stone: We except to the ruling of the Court.

[fol. 688] By Mr. Monroe: Mr. Stone, you had in Court at the last hearing here a profile of the Jackson & Eastern Railroad, will you let me have it please?

Mr. Stone: I will.

By Mr. Monroe: In connection with the testimony of the witness I offer in evidence the profile handed me by Mr. Stone, marked Exhibit "Y," and I request that the stenographer identify it as Exhibit "Y."

The Exhibit was handed to the stenographer and it was then and there so identified.

Mr. Neville: We don't want that to get out of our hands.

Mr. Monroe: I thought it had already been introduced.

Mr. Stone: We have another one, I think.

[fol. 689] By Mr. Monroe:

Q. Mr. Hayden, you said that in making up your profile you used the faint white line, 4 and 5, and took projections at points approximately one thousand feet apart?

A. Yes, sir.

Q. In order to lay out the suggested red line, one-two and one-three please state why you only used distances of one thousand feet?

A. Because it is unnecessary. In measuring the one thousand feet I could see down to the next one thousand. Had it been necessary I would have done so, but on account of the general slope from one point to another made it unnecessary.

Q. Have you, yourself personally been on the routes, one-two and one-three, at these intervals of approximately one thousand feet?

A. Yes, sir.

Q. And what have you to say concerning the feasibility of the routes one-two and route one-three?

A. In my judgment I consider them very cheap lines, very practical lines.

Q. What have you to say relative to the curvature necessary in the suggested line one-three?

A. As indicated on the map it is a straight line between two points.

Q. The map to which you refer is Y-1?

A. Yes, sir.

Q. What have you to say with regard to the curvature in the route one-two?

A. In route one-two we have two slight curves.

Q. Are they indicated on the map?

[fol. 690] A. I don't know about that, yes, they are on the map.

Q. The curves appear on the map?

A. Yes, sir.

Q. Will you please put a figure "6" at the point of intersection of the line of the Jackson & Eastern Railroad as proposed by the Jackson & Eastern, with the A. & V.?

A. I have done so.

Q. Please state how the amount of curvature in the line as suggested by you, namely, route one-three, compares with the amount of curvature in the line proposed by the Jackson & Eastern, that is, route one-six?

Mr. Stone: We object, because the map speaks for itself. It is clearly outlined on the map.

The Court: I believe I would rather he would state it, than to look it up for myself. I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. On the survey line of the Jackson & Eastern, one-six, there are many curves which are objectionable in the operations of a railroad. While they are slight, yet they are curves, and on the line one-three, that is a straight line between two points.

Q. How does the curvature in the line one-two on the blue print, "Y-1" compare with the curvature in the proposed line of the Jackson & Eastern, between points one and six?

A. On the Jackson & Eastern there seems to be seven curves, and on our suggested line, one-two, there are one or two slight curves, two against seven.

Q. Please take your blue print, Exhibit "Y-2", being a profile of [fol. 691] the suggested lines one-two and one-three respectively, and tell me what is the maximum grade which you experienced in

either one of your suggested routes, namely, route one-two and route one-three?

A. The maximum grade on the suggested line one-three is 54/100 of one per cent, a little over one half foot.

Q. The engineers of the Jackson & Eastern have stated on the stand in this case that in the construction of the Jackson & Eastern proposed line that there would be grades of as much as one per cent. How would that grade in your suggested line compare with their grade in the proposed line?

Mr. Stone: We object to any statement of what another witness testified.

The Court: I sustain the objection.

Q. I hand you Exhibit "Y", being a profile that was furnished me a moment ago, being the Jackson & Eastern profile, and I show you that profile in the immediate vicinity of Lucknow, and I ask you what grade you find at that point?

A. One per cent.

Q. And you stated that the maximum in your suggested line was what?

A. 54/100 of one per cent, about one half of one per cent grade.

Q. Please state whether or not at the point where your suggested lines, one-two and one-three, join the A. & V. Railway Company, the line of the A. & V. is a straight line or a curved line?

A. It is a straight line.

Q. Please state whether at the point of intersection of your suggested line, one-two and one-three, there is or is not trestles in the track of the A. & V. Railroad such as the trestles indicated on either [fol. 692] side of the point "6" which is the point of the proposed junction indicated by the Jackson & Eastern?

A. No, sir.

Q. Please state whether or not at the proposed points of junction as indicated on your map of your suggested lines with the A. & V. there is any substantial fill on the A. & V.?

A. No, sir.

Mr. Stone: We object to that, it is nothing but a leading question. Let him state what the facts are. And we move to exclude the question and answer.

The Court: I sustain the motion.

By Mr. Monroe:

Q. Please state what the facts are at the proposed points of junction of your suggested lines as to public road crossings?

A. There are no public road crossings there.

Q. Please state what the facts are as to public road crossings at the junction as proposed by the Jackson & Eastern?

A. There is a public road crossing slightly to the westward of their proposed junction. A public road across the A. & V.

Q. Please state what the facts are in connection with your suggested lines of railroad as to the overflow waters of Pearl River?

A. The suggested lines are out of reach of the back waters of Pearl River with the exception of perhaps one thousand feet. The suggested line skirts the back waters of Pearl River, and is out of the influence, with the exception of about one thousand feet.

Q. You say that it is out of the influence of the back waters of [fol. 693] Pearl River with the exception of about one thousand feet. Explain why you say that?

A. Well I got a definite water mark, about a mile or a mile and a half distance, the water mark established was at Mr. Redfern's house. That was the only reliable high water mark that I could get, all the others were guesses.

Q. What do you mean when you say you got the high water mark?

A. The highest water mark ever known.

Q. Where did you locate your lines with reference to the highest water mark?

A. I don't quite understand your question. The line is about 50 feet higher than the high water mark at Redfern's. I put the grade up for the purpose of taking care of the local rains from the hills.

Q. This one thousand feet to which you refer, how does the elevation compare with the high water?

A. It is about a foot lower.

Q. How does the balance of these suggested two lines of yours compare with the high water mark at Redfern's?

A. With the exception of one thousand feet it is all above high water, way above it.

Q. How does the length of your suggested lines, one-two and one-three compare with the length of the proposed line of the Jackson & Eastern, numbered one-six?

Q. Our suggested line one-three is 47 feet longer than the proposed line of the Jackson & Eastern, and our suggested line one-two is 147 feet longer than the Jackson & Eastern.

[fol. 694] Q. Please state how, in your opinion as a construction engineer, the cost of construction of your two lines, your two suggested lines, one-two and one-three, will compare with the cost of construction of the proposed line of the Jackson & Eastern, one-six?

A. I have no data on what kind of line they propose to build, what the height of their embankment will be, they have quite a number of trestles on the proposed line, trestles will cost about \$18.00 per lineal foot, and embankments about 30¢

Q. With the lines before you which of the two do you consider the cheaper line, one-six or one-three?

A. One three is unquestionably the cheaper of the three lines.

Q. You said something about there being some trestles necessary in line one-six, or more trestles than in your suggested lines?

A. Necessarily there would be in order to take care of the overflow waters from Pearl River.

Q. What effect does the increase in trestles have on the cost of construction?

A. It has quite a bit.

Q. Does it increase or decrease the cost of construction?

A. It increases it. A trestle is now worth about \$18.00 per foot against about 30¢ per lineal foot of lower embankment.

Q. Please state how, in your opinion as a construction engineer, the cost of maintenance of your suggested lines, one-three and one-two, will compare with the maintenance of the Jackson & Eastern proposed line?

A. It will be a great deal less.

[fol. 695] Q. Please state what the facts are as to the relative cost of constructing interchange facilities at point "6," being the point of junction as proposed by the Jackson & Eastern Railroad as against points "3" and "2," being the points suggested by you?

A. At point "6," which is in the high water area, the embankment there is about eight feet high, and there is a trestle on each side of the point of junction, while at the suggested location there are no trestles and the bank is perhaps 2½ feet high as against 8 or 9 feet at the point of junction "6."

Q. What effect does the existance of that high bank you discussed have on the difficulty of an interchange at that point?

A. I am not *up* very well up on that part of it.

Q. You spoke of the trestles, what effect does these trestles have on the difficulties of an interchange?

A. The cost would be a great deal in excess on account of the trestles.

Q. Which would be greater, the cost of the Jackson & Eastern proposed junction or your proposed junction?

A. It would cost more at their proposed junction a great deal more.

Q. Please state whether or not, in your opinion as a construction engineer, there is any objection to the suggested lines one-three and one-two, laid out by you on the map "Y-1"?

Mr. Stone: We object to that, as he has already answered it.

The Court: Well, let him answer it again.

Mr. Stone: We except to the ruling of the Court.

A. None whatever.

Q. From a construction point of view, please state what the relative merits are of your suggested lines as compared with their proposed line?

A. From a construction standpoint the material from which it will be constructed is much better, clay soil, than the Jackson & Eastern proposed line, that is more of a buck shot, heavy material and hard to keep up. The lines that skirt the hills go through a good building material, and perhaps could be used for ballast, but their line could not.

Cross-examination by Mr. Stone, for the defendant:

Q. Mr. Hayden, referring to your map, Hayden "A," Exhibit "Y-1," I will ask you to state to the Court how far it is from the point, Liberty Church to the point where your suggested lines intersect the A. & V. Railroad?

A. About 3,400 feet.

Q. You evidently didn't catch my question. I asked you distance it was on your suggested lines from Liberty Church to point where these lines intersect the A. & V. Railroad?

A. I would have to get it before I could give it exactly here.

Q. At what point do your suggested lines intersect the A. & Railroad?

A. One-three about mile post 91 on the A. & V. Road.

Q. And one-two at what point?

A. One-two at a point about one thousand feet west of m post 91.

Q. I want you to give me the length of these proposed lines that you surveyed.

A. I have given the lengths.

Q. What are you examining?

[fol. 697] A. I had some figures here.

Q. Where did you get them?

A. Off this map here.

Q. Look at the map?

A. It is 6.82 miles from one to 3.

Q. What is one?

A. That is the red mark, that is one.

Q. But the one is not at Liberty Church?

A. Yes, sir.

Q. Hav-n't you got that wrong?

A. I don't know anything about that, these are the only figures that I have.

Q. I am trying to get the total distance from where you propose line leaves the Jackson & Eastern to the A. & V.?

A. Here it is.

Q. What is it?

A. That is 6.82 miles.

Q. What is the length of the other one, is it longer or shorter?

A. One of them is longer than the other.

Q. I asked you which one, and how much longer?

A. This is the one to three, it is 6.82.

Q. And the other one is longer?

A. Yes, sir.

Q. I will ask you to state the distance from the 91 mile post along the A. & V. Railroad to the proposed junction of the Jackson & Eastern and the A. & V.?

A. About 2.8 miles.

[fol. 698] Q. You say about?

A. Yes.

Q. How close to it are you?

A. Well, according to these mile post- that you see in there I suppose in a few hundredths.

Q. Of what?

A. Of a mile.

Q. You could measure it?

A. It would take some time to figure it up.

Q. How does your proposed line intersect with the A. & V.? Does it intersect at right angles?

A. Very near it.

Q. At right angles?

A. Approximately at right angles.

Q. I am going to ask you to mark at the point that I touch with my finger with and "X" in red on your proposed line?

A. All right.

Q. And at the point where I touch with my finger on the Jackson & Eastern line with a "Y" in red?

A. Yes, sir.

Q. What is the distance from "X" to "Y"?

A. I judge about a mile and a quarter.

Q. That throws your proposed line at that point a mile and a quarter to the east of the present line of the Jackson & Eastern?

A. About that.

Q. I will ask you to mark where I put my pencil point on your proposed line with an "A"?

A. I have done so.

[fol. 699] Q. And I will ask you to mark at a point on the Jackson & Eastern at the closest point to "A" with a "B"?

A. I have done so.

Q. What is the distance from "A" to "B"?

A. About a mile and a half.

Q. Then from A and "B" as you go on towards the A. & V. Railroad the distance gets greater between your proposed line, one to three and the Jackson & Eastern?

A. Yes, sir.

Q. You were asked about the curves on the J. & E. line and you said there were seven curves between the point "1" on your map and the point "6" which is the junction with the A. & V. I want to ask you if it is not just a gradual curve from "1" to "6"?

A. A gradual curve, I don't understand.

Q. Isn't it a fact that it is just a gradual curve from the beginning to the end?

A. No, sir, it is not.

Q. You say that curves are objectionable in railroading?

A. They are.

Q. Do you know how many curves there are between Meridian and Vicksburg on the A. & V.?

A. No, I do not.

Q. Ar-n't there 95 distinct curves?

A. I don't know.

Q. Let's see. Take the map, Exhibit "A" to Mr. Duffee's testimony which has been introduced by Mr. Monroe. I will ask you to state where the curve is in the A. & V. between Pearson & Rankin?

[fol. 700] A. That would be a difficult matter to say because this map doesn't show.

Q. I am asking you to compare the curve in the A. & V. between Rankin & Pearson with the curve of the Jackson & Eastern between "1" and "6" and which shows the greater curve?

Mr. Monroe: I have no desire to interfere with the cross examination of this witness, but I say that this is entirely irrelevant, as the point is the difference between the proposed line of the Jackson & Eastern and the line as suggested.

The Court: I will let him ask the question.

Mr. Monroe: We except to the ruling of the Court.

Q. Compare the curve in the A. & V. between Pearson and Rankin with the curve is the proposed line of the Jackson & Eastern?

A. That would be a difficult matter, unless I had made a note of it. It seems that this is a crooked line, but I can't say as to the degree of curvature.

Q. As a construction engineer you are familiar with the A. & V.

A. In a general way.

Mr. Monroe: We object to the line of the A. & V., to any curves in the A. & V.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. As a construction engineer, isn't it your opinion that this curve between Rankin and Pearson was made in the A. & V. to dodge these hills lying north of Pearson?

A. Presumably so.

[fol. 701] Q. These hills lie in the neighborhood that you go through?

A. Yes, sir.

Q. In running your line did you stay west of all of those foot hills?

A. Yes, sir.

Q. You stayed west of them?

A. Yes, sir.

Q. How far does your proposed line intersect the A. & V. west of Pearson?

A. I am not prepared to state exactly, but I judge it is half a mile.

Q. About a half mile?

A. Yes, sir.

Q. Well, if there is a block signal between Pearson and Jackson this connection is within that block signal?

A. I am not familiar with the operation of the block signal.

Q. But if there is a block signal system in operation between Jackson & Pearson your proposed connection is within that block signal system?

A. I am not familiar enough with it to say.

Q. It is between Pearson & Jackson?

A. Yes, sir.

Q. Do you know where Lucknow is with respect to Liberty Church?

A. Only from your map. I have passed it several times.

Q. Where is Lucknow, is it between Liberty Church and the point of your proposed connection with the J. & E.

A. Lucknow?

[fol. 702] Q. I will change my question. Is Lucknow between Liberty Church and the proposed junction of the A. & V. at number "6"?

A. It is to the northwest, to the northeast, I mean.

Q. About how far northeast of there?

A. I can't give you that. I figured that out one time.

Q. That was from Liberty Church to Lucknow?

A. I don't know.

Q. You said something about the cost of trestle work?

A. Yes, sir.

Q. What was your statement?

A. I said that trestles, standard trestles would cost in the neighborhood of \$18.00 per lineal foot.

Q. Well, and what else did you say?

A. A very light embankment would depend largely upon the cost of a cubic yard. Ordinarily an embankment such as we have would cost in the neighborhood of 30¢ per foot.

Q. Wouldn't it depend on the height?

A. Yes, sir.

Q. And how far the dirt would have to be brought?

A. Yes, sir, and for that reason I gave my statement, basing what it was worth on the amount of cubic yards that would have to be handled and the height of the embankment.

Q. You know nothing of the trestle work on the Jackson & Eastern at all?

A. Certainly not.

Q. If there is no embankment at all to be built, of course, the trestle work would be much higher?

A. Yes, sir.

[fol. 703] Q. Wouldn't the trestle work, the cost of it depend on the height of the trestle?

A. Yes, sir, it would in a way, the trestle work.

Q. And the cost of the embankment would depend on the height?

A. Yes, sir.

Q. And how far the dirt has to be brought?

A. Yes, sir, that is quite true.

Q. So when you gave your figures to Mr. Monroe you gave him the highest figures for trestling and the lowest for an embankment?

A. Not necessarily so, no, sir.

Q. How far is it, Mr. Hayden, from the point where your proposed line intersects the A. & V. to Jackson?

A. That I couldn't say.

Q. Mr. Hayden, how long were you over there making that survey?

A. My first trip up there was three days, and I went back again and spent three days, six days altogether.

Q. You were employed by the A. & V. to do the work?

A. I was employed to assist Mr. Durham, and I was to report to him, to give him the benefit of my knowledge of the location and to confer with him. I was sent up there by Mr. Jones of the A. & V.

Q. You were employed by the A. & V. to do that work?

A. Yes, you might say so.

Q. Don't you know you were?

A. My understanding was that I was employed by Mr. Durham. I think, I don't know. I presume he was employed by the A. & V.

Q. Who sent you up there?

A. Mr. Jones.

Q. Of the A. & V.?

[fol. 704] A. Yes, sir.

Q. Have you got your pay for it?

A. No, sir.

Q. You haven't?

A. No, sir.

Q. Have you presented your bill?

A. No, sir.

Q. You were with Mr. Durham all the time up there?

A. Yes, sir.

Q. Are you acquainted with Mr. Durham?

A. Well, I had never met Mr. Durham before that trip, but I had known of him by reputation a number of years.

Q. You have done more construction work than Mr. Durham's has?

A. I don't know.

Mr. Monroe: We object to that, as to how much construction work Mr. Durham has done.

The Court: I sustain the objections.

Q. How long was Mr. Durham up there?

A. He was there three days.

Q. Which three days, the last three or the first three?

A. The first three days.

Q. The fact is, you did practically all the work, didn't you?

A. Yes, sir.

Q. He was there only three days, and then went back home and you went ahead and made the survey?

A. Yes. But he did this, he made the survey in this way. He suggested how this work should be prosecuted. He and I went over [fol. 705] the line together and decided how the survey should be made. We made a thorough investigation of it.

Q. You and he together?

A. Yes, sir.

Q. He had nothing to do with making the survey?

A. Yes, he did.

Q. Did he look through an instrument?

A. Certainly not, but Mr. Durham and I went over the line and he picked it out, and the survey was made under his directions.

Q. You had nothing to do with it?

A. Yes, in conjunction with Mr. Durham, we jointly went over it.

Q. You said he, Mr. Durham, did that?

A. I will correct that then. If I said it I didn't mean to say it. Mr. Durham and I jointly selected it.

Q. Went and picked out the line?

A. Yes, sir.

Q. What did you do, make the marks on?

A. We made projections on the Government chart, after we went over the line I drew the line on the Government chart, the approximate line to be drawn.

Q. On the Government chart?

A. Yes, sir.

Q. And whatever lines were drawn on the Government map, your lines followed those lines?

A. Not strictly, the lines we drew on the Government map were simply followed as a base line, getting the general direction, then in making the survey, of course, it was changed up to suit the ground. [fol. 706] Q. Mr. Durham was not there when that was done?

A. He was there two days of the time.

Q. Two days of the time?

A. Mr. Durham was there three days.

Q. And I understand that in three days of that time you got your data and made the line on the Government map?

A. Yes, sir.

Q. And no survey had been done at all?

A. Yes, sir, the survey was started.

Q. When on the first trip or on your second trip?

A. The survey was started the first time we were over there.

Q. What made you quit? Why didn't you finish?

A. We did.

Q. Then the survey was made on the first trip?

A. It was made, a preliminary line, yes, sir. I think it took four or five days to make the survey.

Q. And you were there three days one time?

A. Yes, sir.

Q. And three days again?

A. Yes, sir.

Q. And it took five days to make the preliminary survey?

A. Yes, sir. I was in there the latter part of the two days that the survey was being made is my best recollection.

Q. Who made the survey?

A. An instrument man was one. I don't know there were four or five in the party.

Q. You didn't survey any of it, and neither did Mr. Durham?

[fol. 707] A. That depends on what you mean by survey.

Q. I mean to use the instruments and actually make the survey?

A. I directed them.

Q. You were not there but two days when it was being done?

A. Two days.

Q. And Mr. Durham was there but two days?

A. No, sir.

Q. Was Mr. Durham there any of the time at all, while the survey was being made?

A. Yes, sir, three days.

Q. But two days he was not there?

A. Yes, sir.

Q. Which end did you begin on?

A. We started on this end.

Q. At the A. & V.?

A. Yes, sir.

Q. How did you get a point to start from?

A. That is the point that was taken.

Q. But how come you to take that point?

A. Mr. Durham and I pointed out this place to the men who actually used the instruments.

Q. But who pointed the place out to you?

A. We pointed it out to ourselves.

Q. The A. & V. told you where they wanted it made, didn't Mr. Jones tell you where he wanted the line run?

A. I don't know. I don't think Mr. Jones mentioned it to me.

Q. Did Mr. Monroe?

A. I don't think so. Wait a minute.

[fol. 708] Q. Isn't it a fact that Mr. Monroe or Mr. Jones, or one of the high officials of the A. & V. pointed out the place where they wanted that line to go?

A. If you will let me answer I think you can understand it. The Government plat was submitted to me with the red line on it.

Q. You said something about a Government map with a line on it?

A. Yes, sir.

Q. Who handed you that map?

A. I don't recall.

Mr. Monroe: Here is the map, isn't it Mr. Hayden?

Mr. Stone: You let me examine this witness and then you can have him.

Mr. Monroe: If the Court pleases, I rise to a point of personal privilege. I want to show the Government map to the man that Mr. Duffee drew the red line on. Mr. Duffee was their witness.

By Mr. Stone:

Q. Mr. Hayden, how did you select this spot here where you started from?

A. I will try to tell you.

Q. All right?

A. I was advised, but I don't recall by whom——

Q. Tell us who it was?

A. It was either by Mr. Jones or Mr. Monroe here, that at a former hearing that an engineer had testified that this line was impractical and couldn't be built, and they told us that they wanted a line, a parallel line between these two points, a better line than this one, out of the water, and a cheaper line.

[fol. 709] Q. Is that the point that you have here?

A. No.

Q. Is that where you made the connection of your line?

A. One-three is about one thousand feet east of the point originally considered.

Mr. Monroe: I ask that Mr. Hayden have the right to look at the

red line drawn by Mr. Duffee, on Exhibit "B" to Mr. Duffee's testimony.

The Court: I overrule your motion.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Mr. Hayden, the point I am asking you is whether the point where this red line strikes the A. & V. is your point, one-three or one-two, or whether it is either one of them?

A. That red line apparently intersects the A. & V. about twelve hundred feet westward of the projected line one-three.

Q. 1,200 feet west of one-three?

A. Yes, sir.

Q. Would that be at one-two.

A. Approximately at one-two.

Q. All right, now getting back to the survey. How far did you go in these three days?

A. I don't recall.

Q. Give us the distance approximately?

A. I couldn't approximate it. I suppose in three days we must have gotten over about four miles and a half.

Q. Do you know where they were when you left?

[fol. 710] A. No, sir.

Q. Could you tell us in a hundred feet of it?

A. No, sir.

Q. Two hundred feet?

A. I wouldn't say.

Q. You couldn't say within two hundred feet?

A. No, sir.

Q. You don't know how far they had gotten when you left?

A. Approximately I do, but I couldn't put my finger on the particular point.

Q. How far have you said?

A. About four and a half miles.

Q. Then you and Mr. Durham both left and went home?

A. Yes, sir.

Q. Then, how long was it before you came back?

A. I went back I think I have my notes here. I couldn't say.

Q. You don't know?

A. About a month.

Q. Something like a month?

A. Two months.

Q. Before you went back?

A. Yes, sir.

Q. When this survey was being made while you were there, were they on one one-two or one-three?

A. They were on the preliminary line, yes, sir.

Q. On the preliminary line?

A. Yes, sir.

Q. That is the crooked white line?

[fol. 711] A. The crooked white line, yes, sir.

Mr. Monroe: I ask that the record show that the line between the points "2" and "4" is the line referred to.

Mr. Stone: State what line it is?

A. It is the white line indicated on the map.

Q. That is the preliminary line?

A. Yes, sir.

Mr. Monroe: Will you give the figures that are on the map, given on the white line?

A. I have given them to you, four and five.

Q. Four and five indicates the faint white line?

A. Yes, sir.

By Mr. Stone:

Q. This crooked line which is the dim white line is the one you first made the survey on?

A. Yes, sir.

Q. I notice when you get over here to this point, which is not marked, mark it with an "S" with a red pencil, I notice that it turns and curves away back this way. Why was that done?

A. As you will understand we run the preliminary line at random, and when we got to this point, we wanted to connect it with the Jackson & Eastern. I don't know why it was. But we finally found the stakes to locate the Jackson & Eastern and come in there.

Q. And they had completed this preliminary survey for about four miles when you left?

A. Yes, sir.

[fol. 712] Q. And it was finished after you left?

A. Yes, sir.

Q. So you were there no more after the survey was taken?

A. Yes, sir, as I explained to you, I was there three days about two months afterwards, and I came up over the line.

Q. Did you use any instrument?

A. Yes, sir.

Q. Who was the man you had with you?

A. We had a man by the name of Herron, a field man, and another fellow, but I have forgotten his name, two engineers and a chain man.

Q. The only line that Mr. Durham knew anything about was the little crooked line that has been pointed out?

A. I don't know about that.

Q. The others had not been run at the time he was in there?

A. No, sir, but Mr. Durham had been kept advised as to the progress of the other surveys, I understand.

Q. I am asking about your own knowledge?

Mr. Monroe: He can't know what Mr. Durham knew about it.

By Mr. Stone:

Q. There had been no survey made at all up to the time that Mr.

Durham left except that faint white line that you have been talking about?

A. That's about it.

Q. He did not come back any more to look at it?

A. No, sir.

Q. And all the work that was done to fix the lines one-two and one-three was done by you?

[fol. 713] A. Well, in a way.

Q. Wasn't it?

A. No. As I understand it all my work was submitted to Mr. Durham for his approval.

Q. Did you locate this line here or did Mr. Durham locate the one, one-three?

A. Well, I put the line on the map.

Q. Who located line, one-two?

A. I guess I did.

Q. If Mr. Durham approved it he did it by looking at the map and not by looking over the ground?

A. He approved it on the examination of the notes.

Q. Not on the ground at all?

A. No, sir.

Q. Have you got your notes with you?

A. No, sir.

Q. Where are your notes that you had?

A. I think they are in the car.

Q. Are the notes so made that we can understand them?

A. I can't say whether you could or not.

Q. You wouldn't object to explaining them to us would you?

A. No, I suppose not.

Q. You wouldn't object?

A. No, sir.

Q. Suppose you bring them up here after dinner and let us talk with you about your notes?

A. Yes, sir, I will.

Q. Did you submit these notes to Mr. Durham or did you turn [fol. 714] them over to the A. & V. Railroad Company.

Q. I submitted the profile, but the notes have been in my possession most of the time.

Q. Who did you submit the profile to?

A. Mr. Jones.

Q. Who made it?

A. I did.

Q. Mr. Durham had nothing to do with the making of it?

A. No, sir.

Q. Did Mr. Durham walk all the way from one end of the proposed line to the other?

A. I don't think he walked it, but we rode along the line.

Q. There is no road through there?

A. Yes, sir, there is a road for about three miles.

Q. And there is no road for how far?

A. Two and a half miles.

Q. You and Mr. Durham were riding in an automobile, just looking, and made what observations you could from the automobile?

A. We were in and out, yes, sir.

Q. And you had other folks to do the surveying?

A. Yes, sir.

Q. The automobile remained in the public road?

A. Yes, sir.

Redirect examination by Mr. Monroe, for the Complainant:

Q. Mr. Hayden, did you ever have occasion to make a reconnaissance for a line coming down the general direction of Pearl River and going into Jackson?

A. Yes, sir.

[fol. 715] Q. When did you do that?

A. About 15 years ago, for the New Orleans & Great Northern Railroad.

Mr. Stone: We object to that, as it has nothing to do with this.

The Court: I will have to hear it, before I can see whether or not it — material.

Mr. Stone: We except to the ruling of the Court.

Q. I wish you would take this map marked Exhibit "A" to Mr. Duffee's testimony and state whether in making that reconnaissance of the line to go into Jackson you came down the Pearl River Valley, you proposed to cross Pearl River above or below the place of crossing of the A. & V. Railroad?

Mr. Stone: We object to that, first, because it is not in rebuttal, and second, because it is incompetent, irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. Above. My direction was to cross Pearl River immediately east of the Capitol Grounds.

Q. Will you take my red pencil which you have, and state how, in your opinion, as a construction engineer, would be the direct way to go into Jackson from Lucknow, if you want to go direct into Jackson?

Mr. Stone: We object to that, unless he is familiar with the grounds.

The Court: He stated that he was.

Mr. Stone: We object to it, as being incompetent, irrelevant and [fol. 716] immaterial.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Q. Draw a line on the route that you were going into Jackson?

A. This is the way, to the best of my recollection.

Q. Put a one on one end of the line and a "2" on the other end?

A. I have done so.

Q. How would the length of that line compare with the length of the proposed Jackson & Eastern, that goes around over the A. & V. into Jackson?

A. I would say that the red line indicated there would be a mile and a half shorter line.

Q. In your opinion as a construction engineer, if the object of the Jackson & Eastern is to go into Jackson, which of the two lines is preferable, the red line which you have drawn or the proposed line down to the A. & V.?

A. The red line.

Q. If the object of the Jackson & Eastern is to come to a junction at a practical and reasonable point with the A. & V. Railroad, which line is preferable, the proposed line of the J. & E., or line one-two, or the line, one-three?

Mr. Stone: We object, he didn't bring out anything like that on direct examination..

The Court: Let him answer the question.

Mr. Stone: We except to the ruling of the Court.

A. I would certainly recommend line one-three, if their intention was simply to make a connection with the A. & V.

[fol. 717] By Mr. Stone:

Q. And that is based on what connection we want with the A. & V.?

A. Yes, sir.

By Mr. Monroe:

Q. You were asked on your cross examination about the cost of trestles, and you said something concerning the elements of cost, what were some of them?

A. I think I mentioned decking.

Q. State to the Court what proportion of the cost of a trestles is comprised in the cost of decking?

A. Well, I should say about 65 per cent.

Q. What do you mean by decking?

A. That means the caps used in the trestle, and the stringers, piles, and the caps on top of that, and the ballast.

Q. You were asked if in giving the figure of \$18.00 per lineal foot of trestles, and 30¢ per lineal foot for embankment, you had not used the highest figures for trestles and the lowest figures for embankment. I wish you would state to the Court what you did use?

A. In giving the figures for trestles, that is the average cost. I had occasion some years ago to make a survey in the State of Louisiana where standard trestles were made, for the Missouri-Pacific, and I had to get these figures, and from that cost of trestles will have to be added the extra cost of labor and material, and the best opinion I could give for the cost of standard trestles would be about \$18.00 per lineal foot.

Q. Does that represent the highest cost or the lowest cost?

A. That is the average cost, yet it would depend on the height of the embankment, where the timbers came from and so on.

[fol. 718] Q. But that would be the average cost?

A. It would.

Q. How did the character of the trestles to which you refer compare with the trestles which you assume would be used in the Jackson & Eastern proposed line of railroad?

A. I assume that they are going to use the standard trestles.

Q. In calculating your lineal foot cost of embankment at 30¢, what character of embankment did you consider as compared with the character of the embankment which you estimated on lines one-two and one-three?

A. My estimate was that on lines one-two and one-three, that they would be established from the material that was found there, and without going into details and without figuring it up I judge it would be about 30¢, maybe in some places 35¢ and in others 20¢ per foot.

Q. Now, I want to make it entirely clear to the Court your familiarity with the lines one-two and one-three. At how many points on the lines one-two and one-three have you, yourself, actually been on the ground and checked the points with instruments?

A. Over every foot of it.

Q. Explain what you mean when you say that you have been on the ground, over every foot of it?

A. By walking over it as previously testified about, and taking measurements every one thousand feet for a line that was used as the preliminary line, or base line, then making other measurements and then connecting the points on the profile and making a new profile.

Q. Who made these two maps, "Y-1" and "Y-2" introduced as part of your testimony?

[fol. 719] A. I did.

Q. Some reference was made in your cross examination to the hills in the neighborhood of Pearson. Are there any hills which obstruct the lines one-two or one-three?

A. No, sir, our profile will show that.

Recross-examination by Mr. Stone, for the defendant:

Q. You said that the best way to go to get into Jackson was by the red line and cross the river above the Capitol?

A. Immediately east of the Capitol.

Q. Which Capitol?

A. The Old Capitol.

Q. What connection with what railroad would there be?

A. The New Orleans & Great Northern right of way—

Q. What railroad runs in that vicinity?

A. None now.

Q. I want to ask you this about your comparative cost of fill in an embankment.

Mr. Monroe: I didn't bring out anything new along that line.
The Court: Let him answer.

Q. Suppose the trestle is low, wouldn't the cost be about the same?

A. No, sir.

Q. The cost is based on the height?

A. Certainly.

Q. What would be the ratio of the cost?

A. I couldn't answer that without the figures.

Q. Wouldn't it be practically the same?

A. No, sir.

Q. The higher the trestle the more it will cost?

[fol. 720] A. Yes, but Mr. Stone, your trestle doesn't increase in expense in the same ratio that your embankment does.

(Witness excused.)

Court here recessed for noon, to convene at 1:30 p. m.

[fol. 721] Court having convened for the afternoon session the following proceedings were had.

Mr. Monroe: Mr. Stone, Mr. Hayden has those notes here that you asked him to bring.

Mr. Stone: We won't detain him to ask him about them.

E. FORD having been called by the complainant and having been duly sworn, testified as follows, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. Mr. Ford, what is your name, residence and occupation?

A. Edward Ford, New Orleans, Louisiana, Assistant to the President of the A. & V. and V. S. & P. Railways.

Q. How long have you been connected with the A. & V. Railway?

A. 25 years, the first of April last.

Q. What experience have you had, Mr. Ford, as a railroad engineer?

A. I graduated from college in 1881, and in 1882 I was Surveyor for the Canadian Pacific Railway Company, and from the first of October, 1883 to April 1, 1888 I was with the Canadian Pacific Railway Company. I was general road man with the Central of Georgia in 1888, held the position for about three years, and became Superintendent, and was then with a line that became a part of the Seaboard Air Line. Then I went to Panama as Chief Engineer of the Panama Railway Company, and returned from there in 1907. I built a railroad in Pennsylvania, and then I came to this country, in April of 1898, and I was made Superintendent of the V. S. & P. and the A. & V. from April 1898 to September 1907, when I became Assistant to the President in New Orleans.

Q. During all that time what connection have you had with the [fol. 722] engineering department of the A. & V.?

A. I have been connected with it ever since I came to this country. Not only that, but the operating department also.

Q. Are you familiar with the point of junction between the A. & V. Railway and the proposed line of the Jackson & Eastern Railroad Company, which is at a point "J" on the map "F" which I hand you?

A. Yes, I am familiar with that location for a certain distance.

Q. I was asking you about the junction?

A. Yes, sir, I am pretty familiar with it and have been since 1900 and 1902.

Q. Will you state, in your opinion as an engineer, that proposed junction is a proper or an improper one?

A. It is a very improper, impractical and dangerous place.

Q. Will you explain to the Court your reason for that opinion?

A. Well, I will have to connect with my engineering experience my operating experience. In the first place the A. & V. coming from the east is coming around a curve to the left and the J. & E. coming from the north is on a curve to the right. Just east of the proposed connection is a trestle about 400 feet long, and an engineer coming around this curve is looking off at a tangent from the curve, and from the point he is looking he can't see the junction until he is almost there, and the engineer approaching this junction from the north on the J. & E. is on the right hand side of the locomotive, so his view is obstructed and he can't see what is happening on the A. & V. The two lines meet on a curve and the track of the A. & V. is elevated, and on account of the curvature of the track, the J. & E. should be [fol. 723] elevated, too. Trains going around this curve running at high speed, well it is almost impossible to take the elevation out of the A. & V., and consequently, I would call it the west rail of the Jackson & Eastern would have to be elevated to the same plane, and then the elevation would be on the wrong side, in the wrong direction. The inner rail of the curve would be higher than the outer rail.

Right at the point where the switching would be done is a road crossing, which is dangerous. A short distance beyond that is a trestle where Pearl River comes very close in between the A. & V. and the J. & E. This trestle is very near the Farish Bridge which is a public road bridge. So you get a junction between two trestles, and a junction point at a road crossing.

Q. Why is it objectionable to have a junction in the proximity of a public road crossing.

A. With a public road crossing there, joining a railroad there and interchanging cars, switching cars from the A. & V. to the J. & E. and from the J. & E. to the A. & V. would be switching across this crossing.

Q. It has been suggested that as a result of putting a junction where this road crossing is, it would be necessary for the A. & V. trains to slow down at that point, and therefore, the danger would be decreased to persons using the public road crossing. What have you to say about it?

A. Well, there is nothing on the plans to indicate how the cars are to be interchanged, no suggestions of interchange tracks. The engines that were delivering cars would have to switch backwards and forwards across what is commonly known as Curran's Crossing, after

they had taken the cars off the J. & E. and placed them on the A. & [fol. 724] V. and was switching back, people with automobiles who would be driving in between the two lines would not understand that the train was coming back in one or the other of the tracks.

Q. You said something in regard to the A. & V. Railway being on a fill at the proposed point of junction. Can you give the approximate height of that fill?

A. I hav-n't made any statement about it, but it is on a fill of about 10 feet.

Q. Would that have any bearing upon the practicability or impracticability of that spot as a junction?

A. It is objectionable at any time to make a junction of two roads on a narrow bank, where you are going to run along either one line or the other.

Q. About how wide is the bank of the A. & V. at the proposed junction point as compared with standard lengths?

A. The A. & V. is 21 feet from the edge of the slope, leaving 9 feet of ties, and then 12 feet or six feet from the outer end of the tie. Passenger trains and freight cars all 10 feet in width stick out five feet from the center of the track.

Q. What effect would the fact that the A. & V. is on a 10 foot fill at the proposed point of junction have upon the cost of the junction point?

A. Locating it above the natural surface of the ground adds to the cost.

Q. I would like for you to explain to the Court, if you will, what trestles of the A. & V. are in the immediate vicinity of the proposed junction point?

A. In the last trial reference was made to one as the Farish [fol. 725] Bridge, but that is the public road bridge. I want to give you the proper number of the bridge.

Q. Give us then, the number of the trestle on the railroad which — immediately adjacent to the public highway bridge known as Farish Bridge?

A. 94.

Q. What is the length of that trestle on the A. & V.?

A. 400 feet.

Q. Approximately how far is that from the proposed point of junction?

A. About 400 feet.

Q. That is the trestle west of the Junction?

A. It is.

Q. Is this trestle which you have just been referring to east or west of this proposed junction?

A. It is west of the proposed junction.

Q. Is there a trestle on the A. & V. to the east of the proposed junction?

A. There is. That bridge is 93-6.

Q. That is the number?

A. Yes, sir, 93-6. At the 93 mile post.

3
7
5

Q. How far is that bridge from the proposed point of junction?

A. About 550 feet.

Q. What is the length of the trestle to the east of the proposed junction?

A. Both bridges are 400 feet long.

Q. What bearing, if any, have these two trestles upon the propriety of this as a point of junction?

[fol. 726] A. There is no way for the train men to get from their cars down to the junction without getting out and walking over the cars or getting down and going around.

Q. Is that objectionable?

A. It is very objectionable.

Q. Why?

A. There is no place for the men to walk. The width of the ear is such that they can't walk along on the embankment, and the only thing they can do is to walk over the box cars and then climb down.

Q. It has been suggested that there could be provided walkways?

A. You can do that.

Q. Is it satisfactory?

A. It can be done.

Q. Is it satisfactory?

A. This provides a place for them to walk.

Q. Would that eliminate the objection?

A. It would eliminate them having to walk over the cars.

Q. Would it eliminate the objection to the trestles?

A. They would have a place to walk, say if they had a walkway four feet long, four feet in width.

Q. Would there then be any further objection to the trestle?

Mr. Stone: We object, as he has already answered that question a number of times.

Q. Would the objection be completely eliminated?

A. I don't catch your question. I say if you provided a *a* five foot walkway, that they would have a place to walk.

Q. I asked you if that would completely eliminate all the objections [fol. 727] to the trestles being there?

Mr. Stone: We object to him repeating the question, he has answered it already.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. There is always an objection to having to switch across a trestle.

Q. Would that objection be completely eliminated by building these walkways?

Mr. Stone: We object to the question. It has been asked.

A. There is an objection to having long ties put out over the trestles. There is always a danger that the timber will be rotten. I would say that it is certainly very objectionable.

Q. Are you familiar with Pearl River and its behavior?

A. I am.

Q. How long have you been familiar with it?

A. My first experience with it was in the big flood in 1900 and the flood in 1902.

Q. Were you connected with the A. & V. at that time?

A. Yes, sir, I was in charge as Superintendent.

Q. What was the effect of the 1902 flood on the A. & V. in Pearl River Valley?

A. The A. & V. was tied up for several days. We couldn't run any trains. The track at Pearl River and at Farish Bridge was turned up on end, and held there by the telegraph post. Bridge number 94 was tilted up by the flood waters coming under Farish Bridge, with the drifts that had been caught and held there, and when it struck [fol. 728] Bridge 94 it tilted it up, and that is illustrated here in this picture.

Mr. Stone: That was in 1902.

A. Yes, I am standing on the bridge, you will notice the rails in the photograph. I am standing in the middle of the bridge. The track east of *their* was turned into what you might call a cork screw, for quite a long distance east. Trestle 93-6 was turned partly over, and beyond that the track was twisted in a cork screw as shown in the photograph.

Mr. Stone: We move to exclude the question and answer with reference to the flow of the water against the A. & V. Railroad as same would be influenced by the construction of the J. & E. Railroad, for the reason that the building of this junction would have no effect whatever upon the A. & V. Railroad in case of floods, and the objection registered against it here because of the construction of the J. & E. Railroad, north and east of the point of junction is not material in this injunction suit. We, therefore, object to the introduction of any proof touching the effect that the construction of the J. & E. Railroad, north and east of and away from this junction, would have upon the A. & V. Right of way.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Mr. Stone: We now move to exclude all the testimony introduced by the complainant with reference to the effect that the construction of the J. & E. Railroad from a point at the beginning of the right of way of the A. & V. Railroad, back north and east and up Pearl River, for the reason, that the effect that the Jackson & Eastern [fol. 729] would have upon the water of Pearl River is not material in this law suit, that the issue of this law suit touches whether or not it is right to turn out a switch on the property of the A. & V. Railroad, but does not touch whether or not it is right to construct our embankment from the right of way of the A. & V. north and east from that point, and all the testimony touching the effect that the construction of the railroad would have upon the A. & V. Railroad property is, therefore, incompetent, irrelevant and immaterial to the issue.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Q. I hand you photographs, Exhibits "G-1", "G-2", "G-3", "G-4", "G-5", "G-6" and "G-8", and ask you if these are the photographs you referred to as showing the conditions in the 1902 flood?

A. These are the ones referred to by me. One shows Mr. Robinson in a boat, that was taken by Mr. Smith. He was on the bank and took the picture of Mr. Robinson, who was in the boat.

Q. Mr. Smith is dead now?

A. Oh, no, he is very much alive.

Q. Please state what, in your opinion as an engineer, will be the effect upon the A. & V. Railway Company of the building of the Jackson & Eastern Railroad, building their line as proposed, with respect to the floods of Pearl River?

Mr. Stone: We object to all the proofs along this line.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. When the water gets to a certain stage it begins to go under [fol. 730] our trestle, 94, and flow around.

Q. Will you point out trestle 94 on the map "F", Mr. Ford?

Mr. Stone: It is understood that we object to all of this.

A. When the water begins to rise here.

Q. You refer to trestle 94?

A. Yes, 94.

Q. 94 is west of the junction?

A. They are number from Meridian, going west.

Q. Go ahead with your statement?

A. I refer to trestle opposite mile post 94 on map "F". As soon as the water gets to a certain height it begins to flow, a large volume of water starts to flow around the ends of 94 and goes into Conway Slough which carries it into Pearl River about a half mile below Pearl River Bridge. As the water increases and rises still more the water goes under bridge 94, and after that opening has taken all the water it can, it begins to flow around and go under Pearl River Bridge in front of the City of Jackson. Bridge 94 which is just opposite Farish Bridge, which has always been lower than our bridge, so that bridge obstructs the water until it comes over the top of that bridge, then finally when that begins to go down, more water goes over bridge 94.

Q. I asked you what effect, in your opinion as an engineer, would the building of the J. & E. line as proposed by the J. & E. Railroad, have on the A. & V.?

A. The effect of the building of that bank will be—I had the bank of the A. & V. raised after the flood of 1902. The flood water, if that Jackson & Eastern embankment was not in there, would go [fol. 731] clean back to the hills near Pearson, and scatter over the valley instead of it being forced through Farish Bridge and under bridge 94, and finally forcing the extra water to go further to the

point of the River down in front of Jackson. In other words, whatever the height of the Jackson & Eastern embankment it stops the water from being spread over the country from their proposed junction to the hills at Pearson.

Q. What is the effect of that impeding of the water upon the A. & V. between the proposed junction and the Pearl River Bridge? Would it be advantageous or disadvantageous to it?

A. Disadvantageous to it.

Q. Why?

A. Because it holds the water that ordinarily runs off, until it gets high enough to flow over their bank, unless they put it high enough for the extremely high water to go under their trestle.

Q. State whether or not this impeding or damming of these waters in the way indicated would be a menace to the A. & V. embankment in times of high water?

Mr. Stone: We object to him leading the witness.

The Court: Let him state the facts.

By Mr. Monroe:

Q. State the facts in regard to that, Mr. Ford?

A. The building of that embankment would be a menace, because it would cause the water, and with it the drifts, consisting of logs to come down to Farish Bridge, and then come up against the A. & V. in a dangerous volume, whereas, if it is not confined, but is allowed to spread out over the valley it would not be deep enough. [fol. 732] Q. I believe I asked you about the extent of your experience with overflows in the Pearl River?

A. We have over flows there practically every year, sometimes oftener, but there is hardly a year that we haven't experienced trouble with Pearl River. In 1900 and 1902 and 1909, I think it was in 1909 and in 1923, these were the years that the water was highest. The water came over the concrete highway. That water was held back by reason of the concrete highway, and when it ran over it made a shot at trestle 93-6. If the highway had not been raised that water that had been flowing for two or three days before would have covered the whole valley of Pearl River up to Pearson. The first of the flood carries much drift, consisting of the branches of trees and logs, which is a menace to the bridge, as it strikes against the bridges unless we use great caution they cause damage. We keep a man whose business it is to push the drift so that it will go under the bridge.

Q. What would be the effect of all these dangers to the A. & V.?

A. If the water was caught here and held by these other banks and then they were washed away there would be a great volume of water to shove against the A. & V.

Q. Have you made any study of the A. & V. facilities between Jackson & Pearson in regard to the track of the A. & V.?

A. I am very familiar with every change of schedule.

Q. State how the adequacy of these facilities compare with the demands upon it by the A. & V.'s business?

A. Between five and six o'clock in the morning until 8 o'clock at [fol. 733] night the facilities between Jackson & Pearson and Jackson and Brandon is taxed to such an extent that we have to have a double track, that is what we have been considering.

Q. Have you made a study of that especially?

A. What do you mean?

Q. Have you made a report on that?

A. Yes, sir.

Q. I hand you a document marked Exhibit "E" and ask you if that is a memorandum of your study?

A. Yes, sir, this was written by me.

Q. Does it correctly state that condition?

A. To the best of my knowledge and belief.

Q. Did you say it was made by you?

A. And checked by my stenographer.

Q. Will you read that into the record after you have shown it to Mr. Stone?

Mr. Stone: We object to that, let him give his testimony. That is nothing but an ex parte statement.

The Court: I don't think it would be admissible, but he may look at the paper to refresh his memory.

Q. From this document, Exhibit "E" will you state into the record the condition as to the traffic demands made upon the section of the A. & V. Railroad between Pearson & Jackson?

Mr. Stone: We object to the witness reading from the paper.

The Court: He can't read the paper, but he can refresh his memory from it.

A. Train Number One leaves there at 6:30 in the morning. That [fol. 734] train carries through sleepers from New York to Shreveport, and is given preference over all other trains. The track is congested from Jackson to Pearson from 6:55 in the morning and keeps it up until 7:25 at night.

Number One, a west bound train leaves Pearson at 6:30 in the morning and arrives at Jackson at 6:40 A. M. Number 52 an east bound train leaves Jackson at 7:20 and arrives at Pearson at 7:48 A. M.; number 34, an east bound train, leaves Jackson at 7:45 A. M., about 15 minutes after 52, and reaches Pearson at 8:05 A. M.; Number 4, an east bound train, leaves Jackson at 8:10 and reaches Pearson at 8:23; Number Five leaves Pearson at 10:05 and reaches Jackson at 10:20; Number 51, a- east bound train, leaves Jackson at 11:55 and reaches Pearson at 12:05 P. M.; Number 12, an east bound train leaves Jackson at 2:25 P. M. and reaches Pearson at 2:35 P. M.; Number 11, a west bound train, leaves Pearson at 2:55 and reaches Jackson at 3:05; Number 33, a west bound train leaves Pearson at 4:00 P. M. and reaches Jackson at 4:30; Number Six, an east bound train, leaves Jackson at 5:45 P. M. and reaches Pearson at 5:57 P. M.; Number Three, a west bound train, leaves Pearson at 6:42 and arrives at Jackson at 6:55 P. M.; From 6:30 A. M. till 8:13 P. M. we have an average of one train in each 67

minutes between Jackson and Pearson, not counting the extra work trains, or any other trains. That is the regular daily movement of trains, and only one section of the trains. Sometimes we run two or three sections, and sometimes we run extra trains in addition to our regular trains. There is a train between Pearson and Jackson on an average of 67 minutes from the time Number One runs in the morning at 6:30 until 7:13 at night. Following train Number One which passes there at 6:30 in the morning, it is followed by, or that train is occupied by four regular west bound passenger trains, three east bound passenger trains, three east bound freight trains and two west bound freight trains. As I stated above, train Number One is a preferred train from the time it leaves Meridian until it gets to Vicksburg. In the winter months on account of the snow and ice up north this train is frequently late, and any changes in the arrangement of the regular schedule upsets the whole thing, and trains moving have to move on special train orders. Sometimes it is 12 or 13 hours late, and other trains making these points have to be given orders. I don't know whether or not you want me to go into the necessity of a double track.

Q. You may go ahead and tell that?

A. The necessity for a double track is very great. We have been considering a double track—

Mr. Stone: We object to the witness reading from the paper.

The Court: I have allowed him to refresh his memory from the paper, but not to read it.

A. Well, I will make this statement. Since 1907 we have been buying timbers and preparing for a double track, beginning at Capitol Street to Commerce Street, for the purpose of having a double track.

Q. Why is it necessary to have a double track?

A. On account of the way our passenger trains run into Jackson. Our freight trains have to switch off for the passenger trains, take Number 51, it has to wait for Number One to pass, and if number one is late, it has to stand there until it goes by, number one, or to [fol. 736] wait until it gets orders to move, whereas, if we had a double track it could move to Pearl River Bridge and as soon as that train passed they would be ready to pull out.

Q. In your opinion, is the facilities of the A. & V. taxed when the trains are on time?

A. It is.

Q. And if the trains are not on time, what effect does that have?

A. As I said, it disarranges the whole works, for Number One to get in late. Sometimes other trains are late.

Q. Does that increase the tax on the facilities of the A. & V.?

A. Very much increases it. In the winter months when the trains from the north, as I stated before, are delayed on account of conditions up in Virginia and Tennessee, and throws Number One late, it disarranges the whole thing, east bound and west bound trains.

Q. Does the cutting of the forests have any effect upon the floods of the streams?

A. When the trees are cut off the forrests and the stumps are taken up, then when the rains come the water hasn't these natural obstructions to dodge.

Q. Then, what effect would that have on the floods in the streams?

A. It would increase the floods, or does increase the floods. In other words, when it formerly took two or three days for the water to flood Pearl River it will now come down in from 24 to 48 hours.

Q. Was any action taken in regard to getting out of the high water after the 1902 flood?

A. There was. We raised the track for the purpose of getting the [fol. 737] bottom of the stringers of our trestles two feet higher than the high water so as to leave about two feet for logs and drift to pass. The top of the stringer is 16 inches, and the depth of the tie is 6 inches, making 22 inches, and we left two feet for the drift to pass under.

Q. How does the elevation of the A. & V. compare with what is required by sound railroad engineering?

A. Well, we left that two feet above the highest high water, but it is quite probable that we will have to raise it two or three feet if Pearl River increases in rapidity.

Q. If the Jackson & Eastern is built on sound engineering principles, how will their elevation compare with the elevation of the A. & V.?

A. I have never seen their profile, and I don't know what their height will be.

Q. I asked you how their elevation would compare with ours if their railroad is built on sound engineering principles?

A. It should be as high as ours, at least. We have during the flood times, a man to sink the logs and let them pass on, that pile up against our trestles.

Q. If the Jackson & Eastern builds an embankment through this valley approximately the same elevation as the A. & V. what will be the effect on the A. & V. embankment in Pearl River Valley?

A. It will turn most of the water down in front of Jackson.

Q. What will be the effect on the embankment of the A. & V.?

A. Probably in a short time, especially from the point of junction to the Pearl River there will be no bank at all left. The water will [fol. 738] get so high that the whole thing will be washed out.

Q. Have you prepared a map, or caused to be prepared a map which is predicated on the J. & E. map, marked Exhibit "F" here, which shows the meanderings of Pearl River?

A. I didn't prepare it myself.

Q. I said, did you cause it to be prepared?

A. Yes, I caused it to be prepared.

Q. Is this map which I hand you, marked Exhibit "A", "Y-3", is that the map?

A. This is a simply a photograph of a map, Exhibit "F," showing this bend around the river, but I would like to compare it with that map.

Mr. Stone: We will let you have the map.

A. The map that I took this from didn't have the bend around there between Farish Bridge and Jackson.

Q. Is this the map that I hand to you?

A. That is Exhibit "F". But the Jackson & Eastern didn't show the bend from the Farish Bridge down in front of the City of Jackson.

Q. I will ask you to have this map identified as map "F", Exhibit "Y-3".

A. I will.

The Exhibit was handed to the stenographer and it was then and there so identified.

[fol. 739] Q. Take the map and compare it with "Y-3" and state whether or not it is a photograph of it, with the edges cut off?

Mr. Stone: We object to him leading the witness.

The Court: I sustain the objection.

A. Yes.

Q. This is a map of the Jackson & Eastern that I have asked you about?

A. It is.

Q. And the one you made?

A. Is a photograph of it.

Q. These figures were taken from this?

A. They were.

Q. Mr. Ford, look on your map "Y-3" and state whether you know any reason why, if the Jackson & Eastern want to go into Jackson, they should not go directly into Jackson across the Pearl River substantially above the A. & V.?

A. Yes, sir, there would be no trouble in any of these points. I don't see why they should turn off and come down to the A. & V. and turn across.

Q. If, after leaving Lucknow the Jackson & Eastern road headed directly into Jackson across the river above the A. & V. crossing, how would the distance over the J. & E. into Jackson compare with the distance which would have to be traversed to go from Lucknow down to the proposed junction with the A. & V. and around the A. & V. bridge into Jackson?

Mr. Stone: We object to the question.

A. I don't know anything about that, I haven't examined it.

Q. Can you tell by looking at the map which will be the longer line?

[fol. 740] Mr. Stone: There is no proof, if the Court please, that this is a feasible route or anything about it.

The Court: I sustain the objection.

Q. Look at map, Exhibit "A", being a map offered in evidence in connection with the witness Duffee's testimony and locate Lucknow?

A. Yes, sir.

Mr. Stone: We object, the map speaks for itself.

The Court: I overrule the objection.

Q. I would like for you to state Mr. Ford, this map was offered in evidence by the J. & E. Railroad. I will ask you to look at the map and state after looking at the map whether the distance from Lucknow into Jackson across Pearl River, how that distance will compare with the distance from Lucknow down the proposed line of the J. & E. and over the A. & V. into Jackson?

The Court: I think the Court can see that without further testimony.

Q. In your experience as a railroad engineer, is it or is it not customary to make junction directly between the main lines of two railroads?

A. I can only say that in my 25 years experience——

Mr. Stone: We object to what is customary.

The Court: I overrule your objection.

Mr. Stone: We except to the ruling of the Court.

A. There is no junction point between any railroad from Meridian to Shreveport where the junction is made with the main line of the A. & V. They are all made through side tracks. For instance, at Newton the G., M. & N. comes around and goes into the side track [fol. 741] south of our main line. The I. C. at Jackson is made through the yards. At Vicksburg the connection with the Y. & M. V., their main line and the main line of the A. & V. have no connection as between main line and main line, but the connection is made in the yards through interchange tracks. Going across into Louisiana, at Tallulah——

Mr. Stone: We object to all of this.

The Court: I will let him go ahead.

Mr. Stone: We except to the ruling of the Court.

A. At Tallulah 17 miles west of the River, the Missouri Pacific runs into our side track south of the station. At Rayville, 51 miles west, there are the same conditions, the connection is made with the side tracks. At Monroe, Louisiana, this is made a junction, the Missouri Pacific again, connects by interchange tracks, and the Missouri Pacific don't go on our tracks at all.

At Tremont, a junction 92 miles from the River, with the Tremont & Gulf Railway, they don't go on our line at all, the interchange is by side tracks. At Ruston, we have an interchange with the Rock Island Railroad where the interchange is done on side tracks. There is no main line connection at all there.

At Gibbsland we have one interchange track that connects into our main line, but it is only used by the V., S. & P. for the purpose of delivering cars to the Louisiana & Northwest R. R. Their engines

don't go on our track and deliver cars on our track. The switching is done by our engines.

At Sibley, with the Louisiana & Arkansas, but there the main line of one track is not used by the engines of the other road. We have a direct connection, but further on we have our own interchange [fol. 742] tracks which we use.

At the crossing of the St. Louis & Southwestern Railroad with the V. S. & P. beyond Shreveport, is a main line connection of our line with their line, but not for the purpose of interchange, but in case of trouble with their bridge across Red River or with our bridge across Red River, but the lines are protected by the interlocking system, and the train crew have nothing to do with throwing the signals or setting the signals.

At Shreveport all the interchange is done through interchange tracks between the two roads. I will also say that all these interchange points are at regular passenger stops, and not between two stations, and I will say from my experience and knowledge that I can't call to my mind a junction in between two stations, out in the woods, like this junction would be. I don't say positively that there is no such thing, but I don't know of any such thing.

Q. Mr. Ford, it has been testified that there were some trees on the inside of the curve of the A. & V. near the proposed point of junction which obstructs the view, somewhat. I will ask you if an effort has been made to purchase these trees to get rid of them?

A. On the south side of the main line starting at Bridge 94 and from thereon, on the inside of the curve—many years ago we tried to buy the trees, or the right to cut the trees, so the fireman on the west bound trains could see around the curve, anything across Pearl River and on east bound trains the engineer could see Curran's Crossing and the track there, but more especially Curran's Crossing.

Q. Was that effort successful?
[fol. 743] A. No, sir, we couldn't buy the land or the trees. Mr. Robinson was the claim agent at the time, and he made an effort several different times to buy the trees so we could cut the timber down there, but they wouldn't sell.

Q. It has been suggested in this case that the danger complained of by the A. & V. at the proposed junction might be eliminated by the A. & V. moving their yard limits just beyond the proposed point of junction, out to the east of the proposed point of junction. Have you given that subject any consideration?

A. I have, a great deal of consideration.

Q. Have you made a memorandum touching that?

A. I have made one.

Q. Will you refresh your memory from that memorandum and state your views in regard to that suggestion?

Mr. Stone: We insist that he give his views without looking at the paper.

The Court: I understand that the witness can refresh his memory from a paper.

A. I will state that it contains a great many figures, and of course it would be impossible for me to carry them all from memory.

The Court: I think he can look at the paper.

Mr. Stone: We except to the ruling of the Court.

The Court: He is not introducing the paper.

Q. Then go ahead and make your statement, Mr. Ford?

A. The purpose of the yard limit board is to require trains to reduce their speed and bring the trains under control, and if there is [fol. 744] another train using the track they can come to a full stop before causing any damage. Our yard limit board is placed, for instance, at Jackson, on account of the stiff curve around Pearl River bridge, it is placed on the straight line east of the bridge. The last switch at Jackson is the switch of the Morris Ice Company, and the yard limit board is placed out 1,950 feet east of the switch of the ice factory, and all trains coming from the east reduce their speed and are prepared to stop, so if there is a switch engine on the track it can run into the side track. All the trains must reduce their speed so as to allow the switch engines to do their work, and not interfere with the main line trains using the track. Trains are required to run their trains through the yards at a reduced speed, a speed of about 8 or 10 miles, so they can be stopped in a short distance. If the yard limit board is to be moved out beyond this junction it might as well be moved on to Pelahatchie. The same principle is involved. The distance is 1,950 feet from the ice plant switch to the yard limit board, and from the ice plant switch to Jackson 2,717 feet, making the total distance 4,567 feet.

Now, to protect the engines switching at the Jackson & Eastern proposed junction the yard limit board would have to be put on a straight line east of bridge 93-6, a distance of about 3,000 feet, consequently the board at Jackson would be 7,567 feet from the Morris Ice Plant switch or one mile and 2,287 feet, one mile and a half. There should be no reason why we shouldn't just move the yard limit board on to Pearson, the trains would have to reduce their rate of speed.

Q. There would be no reason why we wouldn't move it on to Pearson?

[fol. 745] A. There is no reason why we should move it at all. But if it had to be moved, the principle is the same. If it was moved out past this junction it would then have to be moved on farther so it could be placed on a tangent so the engineer could see it. Switch engines have the right to operate in the yards, but they have to clear the track for straight line trains, and if they have to come this distance out to do this work they wouldn't have time to do any work, as there is no switch for them to run off in to clear the main line. A switch engine working in the yards goes into the nearest side track when a train comes in view, but if they have to go out here, there is no side track for them. They would probably have to go all the way to Commerce Street to get into a side track.

Mr. Stone: We object to him just turning the witness loose and let him go.

The Court: I think at the last trial the question came up about moving the switchboard.

Mr. Stone: But all that is not in response to the question.

The Court: It seems like it is relevant to the issue.

A. In operating switch engines at a point like at the junction of the Jackson & Eastern with the Alabama & Vicksburg, they would have to cross Pearl River on the switch engines and if anything should happen, or they were stopped, there would be no way of communicating with the yard office or the train dispatcher at Vicksburg. After they cross Pearl River there is no way of communicating with the yard office so they can be notified as to what trains are late, or any way they can report anything that happens. As a matter of [fol. 746] fact, running switch engines out there under our yard limit would be the same as running an extra train through there, as a matter of fact, no such thing could be allowed without having a telegraph office there where regular orders could be given, otherwise they would be all tied up. Either the engines would be standing on the side tracks all the time, or they would tie up the main line trains going through there.

In case of a derailment of the switch engine, or something of the sort up there, there would be absolutely no way of communicating it to the main office without walking a man back, in the present case, to the ice plant switch in Jackson and telephoning to the yard crew, to be sent to the dispatcher at Vicksburg. A switch engine crew consists of an engineer, fireman, foreman and two switchmen, and they have no caboose, like on the regular trains, but they are all on the engine, and in case of a derailment every one of them are probably hurt or injured and there would be nobody to communicate with anyone else, as there would be in a freight train where the train conductor and the flagman are in the caboose, and there is hardly any chance of all of them being disabled.

In running a switch engine, there is no attachment to throw cattle off the track, and if they should strike them the engine would likely be derailed and thrown down the bank and the crew would have to lie there, if every one of them were injured, as there would be no one to communicate with any one or to flag passing trains.

If the yard limit board is placed a mile and 2,287 feet from the last switch at Jackson, that would require all freight trains and passenger trains to reduce their speed to 8 or 10 miles, making them pull that distance at a speed of maybe five or six minutes to the mile, and that would mean nearly the whole distance from Pearson to Jackson.

There is another thing, we have switch engineers that are not allowed to run out on the main line, there are two in Jackson, and if we undertake to run switch engines out on this main line these men, old men, will have to give up their jobs, because these men are not permitted to run the road engines. We also have yard conductors in the same condition, they will have to be discharged after long and faithful service.

Our contract with the Brotherhood of Locomotive Engineers and Trainmen, who represent the yard men——

Mr. Stone: We object to that, the contract is in writing.
The Court: You can't testify about it, if it is in writing.

A. I don't know as Mr. Monroe wants me to tell that.

If the cars of the Jackson & Eastern were handled by our switch engines our engines would have to go to the 94 mile post, and taken across Jackson to the 97 mile post, across the streets of Jackson, and there they would be put in the freight trains, and pulled back that distance, whereas we run local freight trains for the purpose of doing business between stations. As a matter of fact, local freights are merely switch trains going to places and setting off loads. There would be the case of lumber coming from the Jackson & Eastern, our switch engine would go from 97 mile post to 94 mile post to get these cars, then bring them back three miles to put in the trains at Jackson, and then they would be pulled back over these same three miles, whereas you would have pulled the cars 9 miles, unnecessarily, [fol. 748] when the switching could have been done at the junction, if the junction is made at a station instead of between stations. I think that is all, Mr. Monroe, that I can say on the subject.

Q. You said in your testimony that the proposed point of junction is objectionable because it is on a curve, on a fill and between two trestles and practically at a public road crossing and in the high waters of Pearl River. I would like for you to state to the Court, now, whether there is or is not a point in this vicinity where a junction might be made between the A. & V. and the J. & E. that eliminates all of these objections or most of them?

A. There are several points further east, especially just at the edge of these hills, foot hills. I say there are several routes that are more practical, one of the several routes is to come down at the foot of the ridge and run north about a mile west of Pearson.

Q. Have you examined the map of Mr. Hayden's?

A. No, sir, I just saw it here.

Q. Will you examine that map, Exhibit "Y-1," particularly points "2" and "3," being the suggested points of junction between the J. & E. and the A. & V. in the vicinity of the 91 mile post on the A. & V. Railroad, and state whether at that point these objections to the proposed junction are such as are at the J. & E. proposed junction?

A. If they want a junction point, number three here is an excellent place to make a junction.

Q. State the comparative merits of the two junction points, "3" and "6"?

A. At points two and three there is no danger of high water at all [fol. 749] because it is out of the limits of the high waters of Pearl River, the ground is very level there, and it is within 12 or 15 hundred feet of the west switch of our side track at Pearson, there you may be able to make a connection without making a connection with our main line at all, and not interfere with the passing of our trains. To my own knowledge this is outside the overflow of the waters of Pearl River.

Q. At points "2" and "3" state the facts relative to the objection

you made to "6" on account of the curvature, is that applicable to "2" and "3"?

A. There is no objection on account of the curvature.

Q. Is there a curve on the A. & V. at points "2" and "3"?

A. No it is a straight line there.

Q. What about the trestles at points "2" and "3"?

A. There are no trestles.

Q. What about the road crossings?

A. If there is one there I can't tell it.

Q. Is there any public road crossing in the vicinity of "2" and "3"?

A. There is a road crossing, but I don't know whether it is a public road or not.

Q. There is no public road crossing there?

A. I can't tell, Mr. Monroe, this shows a road crossing, but it is not such a crossing as at Curran's Crossing. It is practically level here and not much travel, but I can't tell whether the road is a public highway or not. But it is not such a crossing as at Curran's Crossing where a bridge has to be climbed to get up, and w-ere we have had automobile accidents already due to the fact that they got their front wheels on the track and couldn't get any further.

[fol. 750] Cross-examination by Mr. Stone, for the defendant:

Q. Then, that map shows a road crossing at this proposed point as indicated by Mr. Hayden's map?

A. We can't tell.

Q. You called Mr. Monroe's attention to a crossing shown on your map?

A. There is one in the vicinity, but I can't tell much about it.

Q. Is there in that vicinity?

A. Yes, sir.

Q. There in that vicinity?

A. Yes, sir, near the 91 mile post, it curves around there.

Q. It might be curved around or it might run right in there?

A. I don't know what it might do, Mr. Stone.

Q. You said that you had a side switch there at this proposed point?

A. Not at the point. We have about 12 or 15 hundred feet west of there.

Q. And at this proposed point you have nothing except the straight main line?

A. No, sir.

Q. You were talking while ago about a switch engine running all the way out to the point where you say that this yard limit board should be placed, making it about a mile and a quarter. How far is it from the present switch board to this proposed point of junction?

A. How was that?

Q. How far is it from the present yard limit board to this proposed junction?

A. The distance from the ice factory.

[fol. 751] Q. I am asking you about where the board is now, how far it is from this proposed junction?

A. If I know what you mean it is 2,621 feet.

Q. The point I want to ask you is, if the switch engine wanted to switch cars, if it is necessary to run their switch engine as far as the switch board, the 3,000 feet?

A. That is the yard limits.

Q. Your board is now 1,900 feet from your last switch?

A. I haven't measured it myself, but this shown 1,946 feet.

Q. Did you get up that data?

A. Yes, sir, I did.

Q. You stated that this board ought to be placed how far beyond this junction?

A. At least 3,000 feet. This one is 1,946 feet on account of the Pearl River curve, it is placed on a line where the engineer can see it.

Q. I am asking you how far you said it ought to be placed out, not for an argument?

A. 3,000 feet. I am not giving an opinion, but as an officer of the railroad, operating officer, I would require it to be put that far out.

Q. You have a long list of objections to changing the yard limit board. When did you make that up?

A. Last summer, sometime in August, when I expected you to finish this case last August.

Q. You tabulated out the objections you had to that?

A. Yes, sir.

[fol. 752] Q. You tabulated out the objections at the time of the trial here to dissolve the injunction?

A. I was not here at the trial a month or so ago.

Q. The trial in August, last August?

A. Yes, sir, I was here, but I thought there was a case here since that time.

Q. You were here at that time?

A. Yes, sir.

Q. Didn't you tell Mr. Neville, here at that time, Mr. S. A. Neville, President of the Jackson & Eastern Railroad, that if this junction was made at this point as indicated, with the A. & V. that the exchange of cars would be made by your road by means of switch engines?

A. I did not.

Q. You didn't tell him that while the matter was being testified about in a conversation with him in the courtroom, before we moved downstairs?

A. I did not.

Q. Didn't you say that in a conversation with Mr. Neville?

A. I said I didn't know why the question should be brought up at all.

Q. Wasn't that matter testified about here in the courtroom before we moved to a side room?

A. So far as I know, but this is only hear say, it was when Mr. Woods was here.

Q. Didn't you prepare these objections prior to that time, or when did you prepare them?

A. I prepared these objections after the matter came up, after I [fol. 753] was informed that the matter had come up, I was not in the court room, and I asked how that question came up.

Q. And don't you remember in the same conversation you quoted something about President Coolidge?

A. Yes, I remember I quoted something that Mr. Coolidge said, a little joke, but I don't see how that got into this matter of the A. & V. and the J. & E.

Q. Mr. Ford, how far in front of the engine can the engineer see the ground while sitting on his seat in the engine?

A. On a switch engine?

Q. On a locomotive?

A. They have different lengths, our old passenger engines are 62 feet and our new ones 82 feet.

Q. Take the ordinary engine of the A. & V. road, how far in front of the engine can he see the ground?

A. I would say 75 or 80 feet.

Q. Then, if the engineer is sitting on his stand and going around one of these curves up to this point here, regardless of having his vision cut off he can see for 75 or 80 feet on either side of the engine?

A. No, sir, he can't see anything except through the line of the boiler head.

Q. How far in front can he see the whole landscape?

A. He can't see anything going around the curve.

Q. Didn't you say how far he could see in front of him?

A. He can't tell, because part of his cab is on the open curve.

Q. You mean that part of his locomotive is higher than his head? [fol. 754] A. Yes, sir.

Q. Which part?

A. The boilerhead.

Q. How high is the boilerhead?

A. There are different sizes.

Q. How large is the ordinary boiler head?

A. I can't tell you.

Q. Are they two feet across?

A. Some of them are five.

Q. If he was on the other side of the boiler head he could see the ground?

A. He can't see on the fireman's side, he can see, but it is on a tangent to the curve.

Q. I infer that he looks out through a window ahead?

A. He can see the ground a short distance, the ends of the ties.

Q. How far in front of the engine?

A. It would depend on the length of the distance he was from the boilerhead back.

Q. Take an ordinary engine?

A. I can't tell without working out a diagram.

Q. Take one of your engines?

A. We operate all the different sizes, from one with a tank 53—

Q. Take one of that size?

A. I couldn't tell you.

Q. Take one 80 feet?

A. I couldn't tell you.

Q. Where is your yard board on this side of Jackson?

[fol. 755] A. Somewhere out at the 97 mile post, I can tell you by referring to my book here.

Q. I am asking you about your extreme yard limit board?

A. I don't know what you mean by extreme yard limit board?

Q. The yard board on the west?

A. We have one at west Jackson, about the 96 mile post.

Q. Is that the extreme yard limit board?

A. That is the outside switch.

Q. Where is your last switch in Jackson on the east?

A. At the Morris Ice Plant.

Q. Where is that?

A. There at Pearl River Bridge.

Q. What mile post?

A. About the 94½ mile post.

Q. Where is your yard limit board on the west, here in the City of Meridian?

A. In the City of Meridian, about 1,500 feet west of where the Meridian and Memphis comes in.

Q. How many miles is that from Union Station?

A. A little over two miles.

Q. How far is it from the yard board—isn't it a great deal more than two miles from the depot?

A. What do you call the depot, the passenger depot?

Q. Yes, sir, the passenger depot?

A. This is back down here at the end of Bragg Street.

Q. How far is it west of the passenger depot?

A. I can't tell you.

Q. About how far?

[fol. 756] A. I don't know.

Q. Then this two miles west of Bragg Street—give me the exact distance west of Bragg Street to your yard limit board?

A. Mr. Stone, do you mean at the point where the M. & M. crosses?

Q. No, sir, the board itself?

A. You want to know the distance?

Q. From Bragg Street?

A. It is about two miles, two miles and 3,500 feet as near as I can tell you.

Q. That is more than two and a half miles from Bragg Street?

A. Yes. Bragg Street is the end of the A. & V. Railroad.

Q. Is that down here at the A. & V. freight depot?

A. I can't tell you. I am not familiar enough with the names of the streets to be able to tell you.

Q. How far is it from the end of your railroad to the passenger depot?

A. I can't tell you.

Q. You know approximately, don't you?

A. I hav-n't been here enough to know.

Q. It is not 10 miles?

A. No, but I can't tell you what the distance is.

Q. Is it a half a mile?

A. I wouldn't say whether it is or not. At this end of the A. & V. we start at the "0" mile post, but I can't tell you these distances that you are asking me about.

Q. Your west yard board in Meridian is further from the passenger station in Meridian than your east yard board would be from the passenger station in Jackson, if it was moved beyond this connection?

[fol. 757] A. Mr. Stone, I can't tell you, I don't know how far this board here is from the passenger station.

Q. You are an engineer and can figure it out?

A. I have nothing to figure it from.

Q. Haven't you got a map?

A. I have got one.

Q. How far is your board now east of the Union Station in Jackson?

A. I couldn't tell you.

Q. Take your map?

A. What map?

Q. Your diagram?

A. This is on *two* small a scale to measure around the curves. I couldn't tell you.

Q. You have been working on that road, superintendent of that road, of the operations of that road how long?

A. 25 years.

Q. And can't answer that question?

A. And no other man could. How far is it to your home?

Q. Three miles.

A. From your office desk do you know how far it is to your Morris Chair in your sitting room?

Q. Exactly.

A. Well, I can't.

Q. And you have been going over that for 25 years?

A. Yes, sir, but if you want the distance I have traveled I can't give it to you.

Q. Now, you said, I understood you to say, that no switch connections were made directly with main lines?

[fol. 758] A. I said interchange switches, so far as I could recall.

Q. How about the switch connection of the M. & M.?

A. That is not a switch connection.

Q. Don't it run into the main line of the A. & V.?

A. That is in the yard limits and is protected by the block signal.

Q. But it does make a direct connection with the main line?

A. I couldn't answer that, but I think it makes a direct con-

nection. But that is in the yard limit and controlled by the yard limit board.

Q. It was not in the yard limit until they moved the yard board beyond there after the connection was made?

A. So far as I know, Mr. Stone, that yard board has been there 25 years.

Q. Wasn't it changed after the connection was made?

A. I think you have confused yourself in this matter.

Q. No, sir, I am asking you if this board was not moved out there after this connection was made?

A. Not that I know of, but I don't have any control over the Meridian yards.

Q. They have got the block signal system?

A. Yes, sir.

Q. Is that a protection?

A. Yes, sir. At the yard limit board the engineer slows down his train, and that is where he becomes responsible.

Q. If the yard limit board was moved east then this junction would be in the yard limits?

A. What yard limits.

Q. If it was set out beyond this junction it would be in the yard [fol. 759] limits?

A. I don't know what you are talking about.

Q. If this yard limit board was moved east of this place of junction, then the junction would be in the yard limits?

A. Yes, sir, that is the first intelligent question you have asked.

Q. You have been asked about the congested travel between Pearson and Jackson. Is there a train that runs through there that doesn't come on to Meridian?

A. What do you mean?

Q. Is there a train that leaves Jackson and comes on to Pearson that does not come on into Meridian?

A. There are work trains that go through there.

Q. That come from Jackson to Pearson?

A. Yes, sir.

Q. All the trains that leave Meridian and go by Pearson go into Jackson?

A. Frequently we run trains to Newton what we call Newton trains, to pick up something for the G. M. & N.

Q. I am talking about between Newton and Jackson, all the trains that pass going to Newton pass Pearson?

A. Yes, sir.

Q. They come on as far as Newton?

A. Yes, sir.

Q. And the heavy traffic that is on one end of the road is on the other end?

A. The heavy traffic, trains starting out of Vicksburg—

Q. If the traffic is heavy on one end it is heavy on the other end? [fol. 760] A. You have got to allow me to answer your question. You are a lawyer and I am an engineer, so you will have to let me

answer the question in my way. What we mean when we say heavy traffic is the amount of tons that is moved over it.

Q. Wait——

A. What you mean is the number of trains that run over the line?

Q. Yes?

A. And my answer to that is that the congested traffic is in the center of the road as the trains start to move to Vicksburg and to Meridian in the morning, in the center of the road.

Q. And that is around Forest?

A. I have shown you the figures, beginning with Number One that leaves Pearson at 6:30 in the morning, and it being followed by Number 51, and for 13 hours and 20 minutes there is a train passing there every 67 minutes.

Q. There are no more running between Pearson and Jackson than there is between Brandon and Jackson?

A. But there it is scattered out, they are all congested here in this one point.

Q. The center point between Jackson and Meridian is around Forest?

A. Yes.

Q. And these daily trains leaving Jackson and Meridian meet around Forest?

A. Somewhere like Forest.

Q. You said something about this water. I want to ask you this one question on that. Have these public highways turned any water [fol. 761] back into the channel of the River that passes trestle 94 and the River bridge or not?

A. These roads were built there when I came to this country so far as I know, and I will say that these bridges have been raised.

Q. These good roads were raised two or three years ago?

A. Undoubtedly, they were raised.

Q. Well, were they?

A. Yes.

Q. There is that much less water to be cared for by the J. & E.?

A. Along the J. & E. obstruction that water covers Pearl River Bottom, and it will be made to come down to Farish Bridge and our Bridge 94.

Q. The water that the good road turns through there will never reach the J. & E.?

A. I don't know.

Q. The water that the good road turns through the trestle, 94, and through *the* under the river bridge, that water will never reach the J. & E.?

A. I don't know the height of it.

Q. If the waters that these good roads turn off, if that water goes in and passes through trestle 94 and then through the River Bridge, that water will never reach the J. & E. track?

A. After the whole track is submerged——

Q. I didn't ask you that?

A. Well, you will have to let me answer your question.

Q. Well, can you answer it?

A. When your road gets submerged in the high water, the water

[fol. 762] covers 8 or 10 feet, then it will throw the water back under Farish Bridge and our bridge 94.

Q. I am asking you whether the goods roads now diverts the water back after it passes through the channel and through the river bridge?

A. I am not familiar with the good roads, just what I can see from the train.

Q. Well, what is the height of your track at Pearl River crossing?

A. What do you mean?

Q. What is the height of your track?

A. From where?

Q. From the general landscape there?

A. From the general landscape. There is a bluff on the west and a swamp on the east.

Q. Which is the higher, your rail where you cross Pearl River, or the rail at the point called Curran's Crossing?

A. I am unable to say. I don't know. I can't give you that exactly.

Q. What is your best judgment?

A. Well, as near as I can tell the east end of Pearl River, at the east end of the bridge, the trestle is only 3/10 of one per cent and that grade runs to 500 feet on the east end of the trestle, making it about a foot and a half higher. There is a dead level from the 94 mile post for about 1,500 feet and I would say that the rail as it comes off the bridge is about a foot and a half higher than the rail than the level grade.

Q. You spoke about a trestle. There is no trestle to the west of the river between the town track and the Royal Feed Company's track?

A. I don't know where you are talking about, but I suppose that it [fol. 763] is the Old Capitol City Fertilizer Company. What is it you want to know?

Q. Is there a trestle?

A. Yes, sir, Pearl River back up in there *in* what is known as Town Creek.

Q. How long is that trestle?

A. 237 feet.

Q. That is within the yards?

A. Yes, sir.

Q. And switching is done over that trestle daily?

A. No, sir, they run the cars back on there, but they don't switch on it at all.

Q. That last side track is the one that goes to the Old City Fertilizer Works?

A. I don't know the street.

Q. This street west of the Old Capitol City Fertilizer Works comes down to the west boundary of the creek?

A. There is a fence around there, but I have forgotten the size of the lots.

Q. Well, how far is that switch in your yard?

A. Our main yard runs to Pearl River Bridge to the yard limit board in West Jackson.

Q. Don't you switch across this trestle?

A. No, we don't, there is no switching done on there.

Q. How far is it from the end of your depot switch to the trestle you are talking about?

A. I will have to measure it for you, the switch leading into the freight depot?

[fol. 764] Q. Just give me the distance?

A. I will measure it for you if you will wait.

Q. Well, what is it?

A. I can't measure it from this, it is on too small a scale

Q. Does it not measure three or four hundred feet?

A. It goes across West President Street and Congress Street.

Q. What is the distance?

A. I don't remember the size of the blocks in Jackson, I think they are 320 feet, and the streets 60 feet, about 790 feet, if I am right in these streets.

Q. Do you know how far it is?

A. I can't say, there are some curves.

Q. You have a 12 degree curve in your yard in Jackson?

A. Yes.

Q. And you have a curve of 16 degrees in Vicksburg?

A. Yes.

(Witness excused.)

[fol. 765] R. L. SHIRLEY, having been called and duly sworn, testified for and on behalf of the complainant as follows, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name, residence and occupation, Mr. Shirley?

A. Robert L. Shirley, Vicksburg, Mississippi, and I am employed as conductor on the A. & V.

Q. How were you employed on August 15, 1923?

A. I was conductor in charge of train number 51.

Q. What kind of a train is 51?

A. It is a manifest freight.

Q. Of what railroad?

A. Of the A. & V. Railroad.

Q. Do you know at what time your manifest freight of the A. & V. number 51, arrived at Pearson Station, Mississippi, on its west bound trip on August 15, 1923?

A. Yes, sir, I was on time, 11:35.

Q. What did you do after you arrived at Pearson at 11:35?

A. I went on to Jackson.

Q. Did you go on over the railroad from Pearson station to Jackson?

A. Yes, sir.

Q. And that was on what day?

A. August 15, 1923.

Q. How many cars do you usually carry on that train?

A. Anywhere around 40 to 60.

Q. How frequently are you on time with that train?

A. 51 runs pretty well on time every day.

[fol. 766] Cross-examination by Mr. Stone, for the defendant:

Q. What is 51, a through freight train?

A. Yes, sir.

Q. That is a freight train that don't stop to do any switching?

A. Yes, sir, we stop at places to do switching, at Newton and Jackson, and other places in cases of perishable freight.

Q. It runs from Meridian to Vicksburg?

A. Yes, sir, it is a through freight train.

By Mr. Monroe:

Q. On that occasion did you stop any where?

A. At Jackson, yes, sir. We set out some at Jackson and picked up some at Jackson.

Q. Do you recall approximately how many cars?

A. Yes, I set out 11 cars at Jackson and I picked up 20 cars.

Q. How was that done?

A. I headed up my engine on the main line at Jackson, and got my road engine out of the way of the switch engine, and had the cars shoved off.

(Witness excused.)

[fol. 767]

OFFERS IN EVIDENCE

By Mr. Monroe, for the complainant: Counsel for the Complainant offers in evidence and asks to have filed a duly certified copy of the record of the proceedings before the Mississippi Railroad Commission, Number 5356, of the docket of that Commission, in Re Petition Jackson & Eastern Railway Company versus Alabama & Vicksburg Railway Company, to require the Alabama & Vicksburg Railway Company to permit the J. & E. Ry. Co. to connect its tracks with the A. & V. Ry. Co. at a point in Rankin County east of the Pearl River, marked Exhibit "S", and request that the stenographer so identify it.

The Exhibit was handed to the stenographer and it was then and there so identified.

Mr. Neville: We object to the document as being wholly irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Neville: We except to the ruling of the Court.
[fol. 768] By Mr. Monroe, for the complainant: We offer in evidence respectively Exhibit "C" and "C-1", being House Bill 913 of the Mississippi Legislature of 1922 and the adverse report thereon. The documents being copies certified to by the Clerk of the House of Representatives and the Secretary of the State.

These documents were handed to the stenographer and they were then and there so identified.

Mr. Neville: We object to them for the same reason as we objected to Exhibit "S".

The Court: I overrule the objection.

Mr. Neville: We except to the ruling of the Court.
[fol. 769] By Mr. Monroe: I offer in evidence, marked Exhibit "R", the original first mortgage of the Alabama & Vicksburg Railway Company to Canal-Commercial Trust and Savings Bank and Felix E. Gunter, Trustees, and with the consent of the Court I will introduce a copy in lieu of the original document.

Mr. Stone: We object to the introduction of the document as being immaterial.

The Court: I sustain the objection.

Mr. Monroe: Mr. Neville you are not objecting to it on account of it being a copy?

Mr. Neville: No, sir.

Mr. Monroe: We except to the ruling of the Court.

The document just introduced was handed to the stenographer and it was then and there identified as Exhibit "R", introduced by the Complainant.

[fol. 770] Mr. Neville: In our objections to the certified copy of the proceedings before the Railroad Commission of Mississippi, I want to state that we further object because the certified copy shows that the proceedings were begun long after the injunction suit was started and after the bill was filed.

The Court: I overrule the objection.

Mr. Neville: We except to the ruling of the Court.

The Court: This case will now be suspended until the Third Monday in January, 1924.

Mr. Monroe: I still have the right to put an additional witness on the stand, and additional witnesses in rebuttal.

End.

[fol. 771]

[Title omitted]

STENOGRAPHER'S CERTIFICATE

I, Bettie Hosey, official court stenographer for the Second Chancery Court District of the State of Mississippi, do hereby certify that the above and foregoing 93 pages contain a full, true and complete transcript of my stenographic notes taken on the trial of the above styled cause.

Witness my signature this the 10th day of January, 1924.

Bettie Hosey, Stenographer.

[fol. 772] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

[fol. 773] (The trial of the above and foregoing cause having been suspended at the November Term of the Chancery Court of Lauderdale County, it was at this Special Term of the Court continued, at which time the following proceedings were had and done.)

E. M. DURHAM, JR., having been called and duly sworn, testified as follows for and on behalf of the complainant, to-wit:

Direct examination by Mr. Monroe, for the complainant:

Q. What is your name, residence and occupation, Mr. Durham?

A. E. M. Durham, Jr., Washington, D. C., Director of the Division of Liquidation Claims, United States Railroad Administration.

Q. Please state generally how you have been employed in the last 20 years?

A. I have been employed as assistant engineer, resident engineer—I was in the Maintenance of Ways and Construction with the Southern Railway, in the valuation department of the Atlanta, Birmingham & Atlantic Railway, in the executive department of the Southern Railway and by the United States Railroad Administration.

I was practically chief engineer, which is another title with the same duties.

Q. What technical training have you had for the profession of railroad engineer?

A. I am a graduate of civil engineering of Lehi University, Class of 1896. After I graduated I was employed in making a hydrographic survey of the Ouachita River in Louisiana, and assisted in the survey of Mohawk Valley, New York, for developing the cost of a ship canal connecting the Great Lakes with the Hudson River, which was conducted by the National Government.

Q. With reference to your work with the Southern Railway, what [fol. 774] did you do?

A. I had charge of the location and construction of lines of railroad in the various parts of the south from the Yazoo Delta to the Carolinas.

Q. Please state whether or not you are familiar with the line of the Alabama & Vicksburg Railway between Jackson and Pearson, and the country to the north thereof?

A. I am.

Q. Are you familiar with the proposed junction of the Jackson & Eastern and the A. & V. Railway, near Curran's Crossing, east of Pearl River?

A. I am.

Q. Will you please give the physical condition of the track of the Alabama & Vicksburg at that point, and the proposed track of

the Jackson & Eastern at that point? And state your opinions as an engineer of the proposed point and give your reasons why?

A. The proposed connection of the Jackson & Eastern and the A. & V. leaves the A. & V. main line on the outside of a one degree and 50 minute curve, about 750 feet east of the west end of the curve; the point of junction is about mid way between two trestles on the A. & V., and it is also almost at what is known as Curran's Crossing, a highway crossing which carries considerable travel in and out of Jackson. The A. & V. track at that point of junction is built on an eight or 10 foot fill, and it is my opinion that I don't think it would be possible to pick a worse place for a connection. The outside of the curve is always superelevated, in order to make it safe for the trains running with fast speed, and to have a switch [fol. 775] on the outside of the curve increases the hazard at that particular point.

Furthermore, it is necessary to flatten the elevation so that would be an insurance against safety where the fairly high speed of trains are reduced.

Q. Would it be an insurance against safety?

A. I mean it would be flattened as an insurance against accidents. And if it is on a curve it reduces the distance to some extent which enginemen can see signals at that particular point.

Q. The fact that it is at a highway crossing increases the hazard to the people who use the highway?

A. And it also delays the trains to some extent if there is any switching to do at that point amounting to anything. The construction of anything there would also tend to make the condition worse, so far as the trainmen getting the signals and getting the position of the switch.

Another thing the train people stopping there have to get off on a fill or a trestle on either side and the hazard to them is increased.

Q. Give the Court your idea of the extent of those hazards that you have mentioned?

A. So far as the railroad is concerned the worst hazard is the fact that it is on the outside of a curve. A great deal of money was spent by the Southern—

Mr. Stone: We object to what any other road has done.

The Court: I sustain the objection. He can state what the practice is.

[fol. 776] A. A great deal of money has been spent taking switches off of curves. ✓

Q. Have you made any study of where a junction between the proposed line of the J. & E. and the A. & V. may be made?

A. Yes, sir.

Q. You have?

A. Yes, sir.

Q. Please state the relative merits of the proposed junction of the Jackson & Eastern with the Alabama & Vicksburg, and any other junction point, between Jackson, Mississippi and Pearson, Mississippi, which you may have in mind?

A. In view of the objection to the connection which I have just cited, it occurred that there might be another connection which was possible and which would obviate or reduce these objections, and as I have stated here on the map, that it was possible to make another junction. With this in view I studied the map between the locality of Drake's Church, north of the line and is — distance of about two or three miles from Pearl River. Between the hills and the River there is a great deal of swamps. After examining the map I decided it was possible to get a line run along the foot hills—

Q. May I interrupt you? Is this the map to which you refer?

A. This is the map.

Q. An Exhibit to Mr. Duffee's testimony?

A. This map shows the outline of the swamp land. Now, on account of the conditions which I have described at Curran's Crossing, I had a survey made, a preliminary line run to see if such a line, one to the east of Curran's Crossing, to see if such a [fol. 777] route would be entirely feasible, and the results indicated that a line of substantially the same length could be secured, that generally speaking was on higher ground, the amount of grading less, provided the same consideration was given the drainage conditions on both routes, and the trestle work would be less, and it would not be necessary to take care of the flood waters at all from the River, and the only drainage necessary to do would be to take care of the water which comes from the hills, and the line is substantially straight, and the result does away with all the objections which have been cited to Curran's Crossing from the standpoint of the A. & V.

Q. I hand you a blue print, marked Hayden A, Exhibit "Y-1" and ask you to examine that blue print and state whether the yellow line on there indicates the route to which you have been testifying?

A. The yellow line, or the yellow lines indicate the projected locations. The solid white line indicates the preliminary line which was run as a base line in order to project the final location.

Q. The yellow lines I take it are the lines marked One-three and One-two on Exhibit Hayden A, Exhibit "Y-1"?

A. Yes.

Q. One three and One-two?

A. That is correct.

Q. On this Map, Hayden "Y-1", the proposed line of the Jackson & Eastern is shown by a white line, one-six?

A. Yes, that is correct.

Q. Will you state to the Court how the line One-two and the line One-three compare with line One-six as to curvature?

[fol. 778] A. The curvature is very much less on the lines One-two and One-three than it is on One-six.

Q. How do the lines One-two and One-three compare with One-six in length?

A. They are substantially the same length.

Q. How do One-two and One-three compare with One-six in so far as the grading is concerned?

A. It would be cheaper to build a railroad on lines One-two or One-three than on One-six.

Q. Can you give the Court some idea about that?

A. The grading is substantially level.

Q. How do one-two and One-three compare with One-six in so far as the subjection to Pearl River overflows?

A. One-two and One-three are entirely clear of the Pearl River overflows, except possibly the north end where it joins the J. & E. location. The trestle work would be considerably less. It would be cheaper to construct and be cheaper to maintain as well, in that there would be less trestle work.

Q. What have you to say as to accidents, the objections have been to accidents at Curran's Crossing as a place of junction, how would they compare with those that would be incurred on lines One-two and One-three?

A. On either of the proposed lines One-two or One-three, the junction would be on a generally straight track, and there would be no objection to the curvature, and there is no highway at the junction as proposed near Pearson and there is an important highway crossing at Curran's Crossing. As a feasible point of connection [fol. 779] it is much better on the proposed line than it would be at Curran's Crossing. There is no danger of flood waters at all.

Q. What about the fills?

A. The fill at this point would be very small, only two or three feet at the outside.

Q. At this point, what do you mean?

A. At either connection one-two or one-three. There is just enough fill for proper drainage.

Q. Have you any other fact bearing on the desirability of the two proposed points?

A. There is one thing that has not been brought out, that has an effect on the proposed location of the Jackson & Eastern in the event of the flood waters of the Pearl River.

Q. It is subject to periodic floods?

A. The Jackson & Eastern location joins the A. & V. main line at a point very near where it crosses the Pearl River, which is just below the public highway crossing. The water has gone over the concrete bridge in the past, and it is at present somewhat of a menace to the A. & V. because the A. & V. trestle opposite this bridge is close to it. When Pearl River is in flood the water overflows over nearly all the territory between the hills and the River proper, and from the 61 mile post of the J. & E., from Hog Creek and down to the Good Road the overflow water from Pearl River goes into the swamps between the Jackson & Eastern and the hills, which I have previously called attention to. This flood water backs up into the various creek, Hog Creek, Neely Bayou and some other streams. If [fol. 780] the Jackson & Eastern as it is under construction, this will in a measure—

Q. You mean the line One-six?

A. Yes, this will in a measure tend to force these flood waters from the River from the valley in the swamps, and will increase the

height of the water at the A. & V. crossing, and that will naturally add to the hazard already existing at that point. Of course the construction of trestles, sufficient trestles on the Jackson & Eastern will relieve that to some extent, but it will not obviate it altogether. There will still be an increased hazard to the A. & V. and the high-way bridge.

Q. How substantially will that be?

A. I think it will be very appreciable, because you can't provide enough openings to allow the water to flow as freely as if there was nothing there. There is always some obstruction. It is much like a fish trap, an old fish trap, whenever the water begins to rise, the water under the old fish trap is higher, there may not be much difference until the water begins to rise. And this Jackson & Eastern will be much like the old fish trap, it will necessarily raise the water at the crossing of the A. & V.

Mr. Monroe: In connection with the testimony of Mr. Durham I offer his deposition.

Mr. Stone: I object to the deposition, he has already been examined.

Mr. Monroe: I was simply complying with the agreement I made with the Court at the former hearing.

The Court: I don't think it is necessary to introduce the deposition and examine orally too.

[fol. 781] Cross-examination by Mr. Stone, for the defendant:

Q. Mr. Durham, when did you make your investigation of the proposed connection between the Jackson & Eastern and the A. & V.?

A. I think it was in August of last year when I was out there first.

Q. How many times were you there?

A. Twice.

Q. How long did you remain there?

A. I was there three days the first time, and about a day and a half the second time.

Q. Who was with you the first time?

A. Mr. Hayden and Mr. Jeffries and——

Q. Mr. Hayden was with you?

A. Yes, sir.

Q. The second time?

A. He was not.

Q. How long after your first trip before you made your second trip?

A. I made my second trip there on the 17th of January, and the first time I was there was in August.

Q. You mean January of this year?

A. Yes, sir.

Q. That was after the survey had all been made?

A. The survey had been made.

Q. Now, you didn't go over this land where this line runs?

A. You mean the proposed location?

A. Yes, sir.

Q. Yes?

ol. 782] Q. You rode in a car over it?

A. I walked over the whole line.

Q. You didn't ride in a car along the route?

A. I walked it.

Q. You stated in your direct examination that in making the connection at Pearson that you would not encounter the flood waters of Pearl River?

A. Yes, sir.

Q. Would it then be possible to go into Jackson?

A. You mean with an independent line?

Q. I mean with either location?

A. I don't understand the question. Of course, you would have to cross the flood waters of Pearl River if you got into Jackson.

Q. That is what I am driving at. You testified about the condition of Pearl River and its overflows, were you ever there at the time of an overflow?

A. Yes, sir, I have passed there.

Q. Yes, on the train?

A. And I have been at Jackson during the time of an overflow.

Q. Did you go down there?

A. I did not.

Q. You stated just now that at present Pearl River overflows the concrete bridge, which is the highway bridge. Do you know that of your own knowledge, or is that hearsay?

A. I do not know that of my own knowledge except from the result of records and from various people. That is one of the things that we went to investigate.

ol. 783] Q. In January?

A. In August and in January.

Q. What was your purpose in going back there in January?

A. It was my purpose to go over the line and confirm the result of these surveys.

Q. That was since these interrogatories were propounded to you?

A. Yes, sir.

Q. Since you gave your depositions?

A. Yes, sir.

Q. Now, Mr. Durham, you stated just now that a switch connection at a point on a curve was objectionable, on the outside?

A. On the outside it is.

Q. The fact is there are many objectionable features that have to be ignored in railroading?

A. Really, but if they can be eliminated it is the part of wisdom to do so.

Q. That fact is, from your knowledge of railroads, you know many instances where good railroads have switch connection on the outside of curves?

A. Yes. I will explain that in this way. When a railroad is first built and the business is undeveloped and they are endeavoring

to save money, but as the line increases in importance the practice is to eliminate them.

Q. But it is practiced?

A. Yes.

Q. The fact is that there is a switch right here in the City of Meridian between the New Orleans & Northeastern and the A. & V. [fol. 784] on the outside of a curve?

A. I can't answer that question for I don't know, but I will say this that the practice in yards is different from the practice on the main lines.

Q. In your testimony you understood that it was the purpose of the Jackson & Eastern to make this connection so that it could run its trains on the main line of the A. & V.?

A. I don't know what its purpose is except to connect with the A. & V.

Q. In giving your testimony did you testify, having in view, that the J. & E. would run its trains on the A. & V.'s line?

A. I didn't know as to that.

Q. Did you consider that?

A. I didn't consider that in my testimony. Of course, any one would speculate what the purpose of the Jackson & Eastern is, but without knowing what they want except a connection, I gave what I thought would be the better line, which is the line indicated.

Q. And that is that your connection at Pearson would do away with the objections of the A. & V.?

A. Yes, sir.

The Court: As to the depositions that were propounded, it is my opinion that it will not be necessary to introduce the depositions, as you have examined the witness and he was here for cross-examination.

Redirect examination by Mr. Monroe:

Q. Mr. Durham, suggestion has been made during the trial of this case, that if the Jackson & Eastern wanted to go into Jackson, [fol. 785] the best way to go would be directly into Jackson, north of the A. & V. bridge. I wish you would state to the Court what you have to say about that?

Mr. Stone: We object, as that is not in rebuttal.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. It seem- that if the purpose of the Jackson & Eastern is to go into Jackson that the shortest way is to turn off across the river as soon as they get to the J. & E. location, I will say half way between Liberty Church, turn and go straight across Pearl River on an independent bridge, and not join with the A. & V. which will necessarily increase the distance, as there is a loop going south and going north again.

Q. On the proposed routes one-two, one-three and one-six, to get into Jackson they have to go over what road?

A. Over the A. & V.

Q. If they wanted to get into Jackson the logical way would be to cross Pearl River as soon as they got opposite Jackson?

A. It would be the shorter line than by the route by Curran's Crossing and over the A. & V.

Q. But if they wanted merely to make a connection?

A. Then One-two or One-three.

Q. Where is your home, of what town are you a native?

A. I am from Memphis, Tennessee, but my family has lived in Vicksburg for the past 33 or 34 years.

Q. Are you familiar with Jackson and Pearl River?

A. I am quite familiar with the streams of this character.

Q. Your domicile is in Vicksburg?

[fol. 786] A. I have lived in Vicksburg for some time.

Recross-examination by Mr. Stone:

Q. Mr. Durham, suppose it would be feasible and practical to run a line direct as you suggested across Pearl River to the north of this proposed line. What connection would the road make with another railroad across the river?

A. I can't answer that without making a study of the question. I don't know whether they would build their own terminals or whether it would make arrangements with another railroad.

Q. This railroad would have to have connection with other railroads, what roads could it connect with?

A. On the north there is the I. C.

Q. Then it would have to cross the entire city of Jackson?

A. That would depend on where it went in.

Q. Isn't the I. C. on the west side of Jackson?

A. It is on the west side of Jackson, but you could go around Jackson.

Q. How far north?

A. That is a question that I will have to answer in a very general way.

Q. You don't know?

A. No, sir, I hav-n't investigated that.

Q. You don't know what it would have to go through up there?

A. I don't know what developments would be made north, or how far north they would go or where they would start.

By Mr. Monroe:

Q. You have made no study have you, Mr. Durham, of a connection with another railroad? Of the N. O. G. N. behind the Old Capitol?

[fol. 787] A. I have not.

Q. I want to ask you how serious you consider the various objections made to the proposed junction at Curran's Crossing?

A. Well, I have mentioned the danger of the turnout, the danger to the trainmen, and the fact that it is on a fill and between two trestles, I mentioned the danger to the people who used the highway

at Curran's Crossing, and the danger resulting in not being able to see the signals because it is on a curve, and I consider the dangers very serious and a'out in the order named, I would say.

Q. Is there a difficulty, or are the dangers and difficulties increased in the night time?

A. Yes, they would be increased at night. The trainmean can's see in getting on and off the trains at night.

By Mr. Stone:

Q. Mr. Durham, you were asked about the right of way of the N. O. G. N. behind the old capital?

A. Yes, I was.

Q. As a matter of fact there is no line of railroad back of there at all?

A. Not to my knowledge. I understood he was asking me about a right of way.

Q. There is no railroad built back there at all?

A. I hav-n't been back there recently.

(Witness excused.)

Complainant rests.

Court here adjourned for noon.

[fol. 788] F. V. VICK, having been called and duly sworn, testified as follows for and on behalf of the defendants, to-wit:

Direct examination by Mr. Neville, for the defendant:

Q. What are your initials, Mr. Vick?

A. F. V.

Q. Where do you live?

A. In Meridian.

Q. What is your business?

A. Railway Conductor.

Q. For what railroad?

A. The G. M. & N.

Q. You say you are a conductor now?

A. Yes, sir.

Q. What run?

A. Freight trains.

Q. Between what points?

A. Meridian and Louisville.

Q. How long have you been connected with the G. M. & N.?

A. I have been working on the M. & M. since 1916, held the position of conductor since that time.

Q. In what capacity?

A. In the capacity of conductor.

Q. A conductor?

A. I was a brakeman and I was in the maintenance of way several years ago.

Q. What road was you connected with before 1916?

A. The G. F. & A., Georgia, Florida & Alabama.

[fol. 789] Q. In what capacity?

A. Conductor and Yardmaster.

Q. How long were you connected with that road in that capacity?

A. About three years.

Q. With what road did you work before that?

A. The G. & S. I.

Q. In what capacity?

A. Conductor.

Q. Freight or passenger conductor?

A. Freight conductor.

Q. Were you ever connected with an other railroad?

A. Yes.

Q. What was it?

A. Let me see, I have the roads backwards, some of them. I went from the G. & S. I. to the T. P.

Q. How long did you stay with the T. P.?

A. Just a few months, and then I went to the G. F. & A.

Q. How long have you been in the railroad business?

A. In the maintenance of way and transportation work since 1901 or 1902, I don't remember which.

Q. In the maintenance of way?

A. That is the construction work, building and keeping up the roads.

Q. Keeping up the tracks?

A. The tracks and bridges, building bridges and right of ways.

Q. Now how many years did you spend in the maintenance of way department?

[fol. 790] A. I suppose four or five years, at different times.

Q. Then what did you do?

A. I then was a conductor.

Q. Were you ever a brakeman?

A. Yes, sir, switchman, yard master and conductor.

Q. Do you know where the location of the proposed junction of the switch connection is between the Jackson & Eastern and the Alabama & Vicksburg Railroads?

A. Yes, sir, I looked it over.

Q. Mr. Vicks, what have you to say with reference to the effect of the junction being between two trestles, state whether or not it will interfere with the switching?

Mr. Monroe: We object, if the Court please, he is calling for the opinion of this man, who has not qualified as an expert.

The Court: I think he can answer the question, I overrule your objection.

Mr. Monroe: We except to the ruling of the Court. And we make our objection to all of this testimony along this line.

The Court: I overrule your objection.

Mr. Monroe: We except to the ruling of the Court.

A. I don't know where they are, but if they are short trestles it wouldn't effect the switching over these trestles.

Q. Well, now, Mr. Vick, the testimony is——

Mr. Monroe: We object to him stating what the testimony is.

The Court: Let's see what the question is going to be.

Q. Mr. Vick, the testimony of the A. & V. is that the trestle just west of the proposed junction is 400 feet long, that it is 400 feet from the eastern end of the trestle to the proposed junction, and it is 550 feet from the proposed junction to the trestle end of the next [fol. 791] trestle, which is 400 feet long. State whether these two trestles will interfere in the switching of cars at that point?

A. I couldn't see where there would be any.

Q. Now, would it be necessary at all for the cars to be uncoupled on either one of the trestles?

A. No, sir.

Q. Now, I want you to explain to the Court, if a train is coming out of Jackson coming east with a car or cars for the Jackson & Eastern to be delivered to the J. & E. what is the custom, what does good railroading require as to the location of these cars on the train, whether or not they are placed on the head end of the train?

A. Next to the engine, yes, sir.

Q. Next to the engine?

A. If they observed the rules they would place the cars to be delivered to the J. & E. next to the engine.

Q. How would they be handled with the train approaching this junction?

A. You would pull down to the switch and uncouple the train, drag up and back, on a train going west, in the interchange track.

Q. Taking a train coming east?

A. Set out the switch ahead of the train and shove the cars in the interchange.

Q. And then what?

A. Go back and couple up.

Q. Suppose they failed to observe the rules of good railroading [fol. 792] and put the cars for the J. & E. to the rear, or near the rear end of the train, and suppose when the engine stopped at the junction the cars for the J. & E. were standing on the trestle, what would be necessary to uncouple the cars on the trestle, or would it be necessary?

A. No, sir.

Q. What would be done?

A. Open the interchange switch ahead, pull off the trestle, cut the train, go in and set what cars you had to set off and return back out.

Q. Now, how far would they pull the train after they had gone into the switch before uncoupling?

A. The length it was standing on the bridge until you reached the

abutment of the bridge. 400 feet or nearly that before the uncoupling could be made.

Q. State whether or not they could pull the cars up near the junction before that uncoupling was done?

A. Yes, sir, pull them clear in the interchange if they desired, in practical railroading they would pull them clear of the bridge and cut them off and go in.

Q. After you delivered the cars what would you do?

A. Return and couple the train.

Q. And go on?

A. Yes, sir, just like we were when we started out.

Q. I want you to state to the Court whether or not you can conceive of any situation where it will be necessary in order to deliver cars to the Jackson & Eastern to uncouple on a trestle?

[fol. 793] A. I couldn't see where it would be necessary. In practical railroading it wouldn't.

Q. When we take a train going east, west from Meridian towards Jackson, where would the cars for the Jackson & Eastern be with reference to the engine?

A. Near the engine.

Q. Where would the train stop before they uncoupled?

A. At the switch, just clear of the interchange switch.

Q. After they uncoupled what would they do?

A. Pull ahead, throw the switch, back in, make the set out, return to the main, pick up the train and proceed.

Q. State whether or not they would pull the Jackson & Eastern cars near the switch before the uncoupling?

A. Yes, sir, pull up near the switch, just in the clear of the J. & E. interchange and cut the cars off, throw the switch, back in and make the delivery and then return to the main.

Q. State whether or not you can conceive of any situation of trains going west where it would be necessary to uncouple the cars on the trestles?

A. No, sir, it would not.

Q. Well, now, state whether or not, from your practical experience, the presence of these trestles would interfere with the proper handling of cars for the Jackson & Eastern?

A. No, sir, none whatever.

Q. State whether it would create any danger, the presence of these trestles on either side of the junction?

A. I couldn't see any.

[fol. 794] Q. Now, Mr. Vick, this main line of the A. & V. at this point is on a fill?

A. Yes, sir.

Q. Eight or 10 feet?

A. Yes, sir, something like that.

Q. State whether or not there is more danger to a train going over a track on a fill than it is on level ground?

A. Not a bit.

Q. Do the trains run as fast over fills?

A. Just as fast.

Q. Is there any more danger in switching cars on a track properly built on a fill than on the level?

A. No, sir.

Q. Well, would the presence of the fill interfere with the switching?

A. No, sir, it wouldn't.

Q. Where does the head brakeman ride in the train?

A. Usually in the engine, but he is supposed to ride on the first car.

Q. Well, say that train is going from the east to the west and they have got cars for the Jackson & Eastern, and the train stops for uncoupling, how does it uncouple?

A. Well, the head man on through freights——

Q. Would he get off his train?

A. Yes, sir.

Q. Before uncoupling?

A. Yes, sir.

[fol. 795] Q. Would he have any difficulty in walking along the side of the track on this fill?

A. No, sir.

Q. State whether or not there is ample room for him to walk?

A. Plenty.

Q. State whether or not that is customary and done often?

Mr. Monroe: We object to what is customary.

The Court: I overrule your objection.

Mr. Monroe: We except to the ruling of the Court.

A. It is customary. He would get off before the engine stopped. In practical railroading by the time the train stopped he would do the uncoupling.

Q. Did you observe closely the width of the A. & V.?

A. I notice that it is a standard piece of track.

Q. Now, this main line is on a curve, is it not?

A. Yes, sir, a slight curve.

Q. On which side of the train going west would the brakeman stand in uncoupling a car?

A. On the left side going west, on the inside of the curve, the fireman's side.

Q. Well, when he uncoupled the cars what would he do?

A. Signal the fireman to go ahead.

Q. Would it be necessary for him to get off the dump to do that?

A. No, sir.

Q. State whether or not he would be in plain view of the fireman?

A. Yes, sir.

Q. State whether or not it is customary to stand on the inside of [fol. 796] a curve in uncoupling cars?

Mr. Monroe: We object to what is customary and also to the leading question.

The Court: I sustain the objection to him leading the witness.

Q. Well, now, he uncouples the cars and give the signals, then what happens?

A. He goes ahead until the brakeman flags him down.

Q. What does the brakeman do then?

A. He opens the switch, and the train is backed into the interchange.

Q. He lets the cars in on the J. & E.?

A. Backs in on the J. & E.

Q. When he comes back what does he do?

A. Couples the train and proceeds.

Q. In all those operations would — be necessary for him to get off the dump?

A. No, sir.

Q. State whether there is anything he has to do or anybody else has to do that endangers his life because of this dump?

A. No, sir, not any.

Q. Well, take it going east, a train coming out of Jackson, and the train stops to get cars from the J. & E. What does the brakeman do?

A. When it is a local freight the headman opens up the switch, the headman heads the train in, of course the train men cuts off the train, gets the cars and backs out and couples up again.

Q. On which side would he get off?

[fol. 797] A. On the engine man's side.

Q. On the inside of the curve?

A. Inside of the curve always.

Q. State whether or not it is the duty of the fireman to receive signals?

A. Yes, sir, that is part of his work.

Q. State whether or not it is the duty of the fireman to look out for signals at a junction point where they are switching?

A. Yes, sir, it is.

Mr. Monroe: We object. There is nothing to show that he knows anything about the rules relating to fireman, and the rule itself is the best evidence, so we move to strike out the question and answer.

Q. You belong to the association of railroad conductors?

A. Yes, sir.

The Court: I sustain the motion.

Mr. Neville: We except to the ruling of the Court.

Q. Do you know anything about the rules with reference to the duty of firemen?

Mr. Monroe: We object, the defendant asked us for a rule book of the A. & V. and it was furnished counsel.

Q. Do you know anything about what good railroading requires of firemen?

Mr. Monroe: We object.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. What does good railroading require of firemen?
 [fol. 798] A. Under standard rules the fireman is responsible for the signals given, and I am sure the A. & V. uses the standard rules.

Mr. Monroe: We move to strike out the answer for the reasons given.

The Court: I overrule the motion.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Neville:

Q. Do you know of any reason why the dump would enhance, materially enhance the danger at that point?

A. No, sir, none whatever.

Q. Well you say that this junction will be on a curve, what part of a curve, the inside or outside of the curve on the A. & V.?

A. On the outside.

Q. Well, state whether that enhances the danger of switching, being on the outside of the curve?

A. No, sir.

Q. State whether or not it is customary for first class railroads to have switches on the outside of curves?

A. Yes, sir, it is customary. They are put on the outside just as much as on the inside.

Q. Do you know of any on the A. & V.?

A. I have noticed them, but I couldn't give you the points where they are at. The A. & V. has switches on the outside of curves, but I can't at this time give you the places where they are.

Q. State whether or not good railroading requires the slowing down of trains while passing over switches on curves on the outside?

[fol. 799] A. No, sir, it makes no difference with the speed of the train.

Q. Well, now, which rail is elevated on the A. & V. at this point?

A. The outside rail.

Q. What is the purpose of that?

A. It is elevated to suit the speed of the train.

Q. What makes it necessary to be elevated?

A. Why, to conform with a certain movement of the train, the speed, the greater the speed the greater the elevation and the greater the curve the greater the elevation.

Q. Would there be any necessity at the point of junction for the outside rail of the Jackson & Eastern to be elevated?

A. Yes, sir, to conform with the main line of the A. & V.

Q. I know, but would it have to be elevated to take care of the fast moving trains?

Mr. Monroe: I object to the leading question.

A. No, sir.

Q. Explain that?

A. The movement there would be slow.

Q. State whether or not you run trains fast in making a switch connection like you do on the main line?

A. Unless it has a very long lead, of course the longer the lead the faster you can approach it.

Q. But is there any necessity for it?

A. No, sir, except where you change freight from one track to another, where there is a double track.

Q. You mean from one main line to another?

A. Where there is a double track, running parallel.

[fol. 800] Q. Where they run fast trains?

A. Yes, sir.

Q. Run them fast from one track to another?

A. In going across a double track.

Q. State whether or not, from your practical experience and observation, the putting of this switch on the outside of a curve would materially affect the cause of derailment or anything like that?

A. No, sir.

Q. How do they construct these switches?

A. They make a small off set of the switch to take care of the point in the construction of the track—

Mr. Monroe: We object, as he has not said that he has had any experience in building switches.

The Court: I sustain the objection.

Q. State whether or not it is dangerous?

A. No, sir, very little, the off set in the rail takes care of it.

Q. Well, now, did you notice Curran's Crossing there?

A. Yes, sir.

Q. State whether or not the putting of this switch at that point would interfere with the trains, effect in any way the trains that did not stop to do switching at that point?

A. No, sir, it wouldn't.

Q. State whether it would effect in any way the operation or the running of fast freight trains and passenger trains?

A. It would not. It would only effect the trains that did work there.

[fol. 801] Q. Well, take the trains that have to stop there to do switching, would those trains pass over Curran's Crossing at a lower or greater rate of speed?

A. Less on account of the stop.

Q. State whether or not that increases or decreases the danger of accidents?

A. It would decrease the accidents at that particular crossing with that particular train.

Q. What makes a railroad crossing dangerous?

A. Great speed.

Q. Of trains?

A. Yes, sir.

Q. State whether or not it is customary in good railroading to switch across public roads and streets in towns and cities?

A. It is.

Q. State whether or not it is done by the A. & V. at Hickory, Newton and other points?

A. Yes, sir, all railroads that do any business do that. If they cross any streets.

Cross-examination by Mr. Monroe, for the complainant:

Q. Mr. Vick, if you had the option for a junction at a point between two main lines between two 400 feet trestles or at a point where there were no trestles, which of the two points would you prefer?

A. Of course, the point where there was no trestle would be better.

Q. Why would it be better to have a junction point where there [fol. 802] were no trestles?

A. The engine man could make a bad stop and stop on the end of the trestle, but in good practical railroad in the handling of the train the engine man receiving the proper signals wouldn't do that.

Q. You stated, I believe, if you had an option of a junction where there was a trestle and a junction where there was no trestle, and you stated that you would prefer to have a junction point where there was no trestle?

A. It would be better.

Q. Be better?

A. It would take care of bad movements.

Q. How was that?

A. Where there was no trestle that would take care of bad movements of the engineer.

Q. Then in the case of a bad movement by the engineer it is objectionable to have a junction between two trestles?

A. Between two trestles?

Q. Why so?

A. If the engineer should not receive the signals from the train men and should stop the train on the trestle where a cut was to be made, then when he realized that the train would have to be dragged up off the trestle so the cut could be made.

Q. If you had the option of having a junction on a 10 foot fill or having a junction point at a place where there was no fill, or practically no fill, which of the two points would you prefer? As an operator, as a conductor, as a trainman?

A. It wouldn't matter with me, if anything I would prefer the [fol. 803] fill on account of it being dry.

Q. The main thing in the construction of a railroad, it is more expensive on a fill, the higher the fill the more expensive the track?

A. But from a- operating point of view I wouldn't object to the fill, not a bit in the world.

Q. Now, if you had the option of a junction point on a curve and at a place where there was no curve, which would you prefer?

A. A slight curve wouldn't matter.

Q. It doesn't matter?

A. The only difference on a curve you have got to work from one side, and where there is no curve you can work from either side, that is the only difference.

Q. Is it a disadvantage to work from, only one side?

A. You have got to pass and receive signals from that one side, and if you have a straight track you give the signals from either side and receive them from either side.

Q. Suppose that side to which you are confined by the existence of the curve happened to be the fireman's side, and suppose the fireman at the time was forced to put fire in the fire box, or do some work on the back of the engine, would that condition be a disadvantage?

A. The fireman at that particular time as they approach a junction it is his duty to look back when the engineer has no view and advise the engineer what is to the rear of the train.

Q. Is there any station at this proposed point of junction?

A. No, sir.

Q. It is nothing but a point out on the track at the present time? [fol. 804]

A. That is all, a crossing.

Q. If you had the option of having a junction point either at a place which is next to a public highway crossing, or else at a place where there was no public highway crossing, which would you prefer?

A. It wouldn't matter with me. The public road crossing wouldn't make much difference.

Q. You say it wouldn't make much difference, would it make any?

A. I will say it wouldn't make any difference.

Q. In case you have a junction point immediately next to a public highway crossing, does or does not that increase the number of trains and engine movements over that crossing?

A. Yes, it will increase the number of movements.

Q. Increase them to what extent?

A. Two. If you want to stop you go ahead, you back in and pull back—it will increase it to two additional movements for that particular train over this particular crossing.

Q. In other words, where a train crosses that crossing one time, it would, were that junction established, cross there two additional times, or three times?

A. That's correct.

Q. Is or is it not a fact that each additional train movement over public highway crossing increases the danger on that crossing?

A. But that particular kind of movement is at a low rate of speed. I wouldn't think it would, one train passing at a high rate of speed and three at a low rate.

Q. Do you mean there are no accidents at crossings?

A. Yes, sir.

[fol. 805] Q. Have you ever heard of accidents at crossing- where switching was being done?

A. Yes, sir.

Q. Have you frequently heard of such accidents?

A. Yes, sir.

Q. Have you very frequently heard of such accidents?

A. I have.

Q. So that, Mr. Vick, you would say that by establishing this junction in close proximity to this highway crossing you do increase the number of movements over that crossing in the case of any given train from one to three?

A. Yes, sir.

Q. And you also say that in case of switching movements over crossings you had frequently and very frequently heard of accidents, am I right?

A. Yes, you are.

Q. If you have three times as many movements over a crossing, other things being equal, you are apt to have three times as many accidents, is that correct?

A. Not when the switching across a crossing is done at a low rate of speed, and a train crosses the crossing at a high rate of speed, there would not be so many accidents.

Q. But I said other things being equal?

A. If the speed is equal, yes, sir.

Q. Now, how many times, have you in the course of your experience been to Curran's Crossing to this proposed point of Junction?

[fol. 806] A. I have been over the A. & V. a number of times, and one trip out to look the situation over.

Q. You went there, got off at Curran's Crossing?

A. I went to Jackson and drove to Curran's Crossing.

Q. And that is the only time in your experience that you ever stopped at Curran's Crossing?

A. Yes, sir.

Q. How long did you stop there?

A. Long enough to look the situation over, I thought.

Q. How many minutes and hours?

A. About 45 minutes or an hour. It could have been longer, I don't remember.

Q. When was that?

A. A couple of months ago. I think maybe it was two months ago.

Q. Did any train pass there at the time?

A. I don't remember, but I think not.

Q. Do you know at what speed the freight trains of the A. & V. Railroad go around that curve at that point?

A. I do not.

Q. Do you know at what speed passenger trains of the A. & V. go around that curve at that point?

A. I do not.

Q. Have you ever rode in the cab of a locomotive of the A. & V. as it came to that point and looked to see as to the extent your vision would be obscured by that curve?

A. I have not.

Q. You have never operated on the A. & V. at all?

[fol. 807] A. I have not.

Q. Neither as a fireman, engine man, brakeman, or conductor, nor any member of the crew of the A. & V.?

A. I have not.

Q. And your total knowledge of this particular situation is confined to this examination that you made in about 45 minutes a couple of months ago?

A. 45 minutes or an hour, I don't remember how long.

Q. Do you know what obstacles impede the view of the train crew as they approach that crossing from the east?

A. No, sir, I couldn't say.

Q. You don't recall, you don't mean to swear there is nothing?

A. I don't recall. Of course the engineer approaching any curve would have his view knocked off the main line.

Q. Is the fact that a junction point is on a curve and the engineer's view of the junction point is obstructed an advantage or disadvantage?

A. It couldn't be a disadvantage approaching this junction point any more than if there was no junction point there.

Q. Explain that more fully please?

A. This engineman approaching this junction point on this curve, if he was headed east, of course, he would have a clear view this way, but if he was headed west, of course, he couldn't see around to this point, around the curve, but I don't think it would be any disadvantage, that it would be any more disadvantage by the junction being there than if it was not there.

Q. Suppose, Mr. Witness, that his train is headed west, coming [fol. 808] from Meridian approaching that junction point and there was another train and train crew at the switch, and suppose that train doing the switching was partly on the A. & V. and partly on the J. & E., and suppose the engineman on the west bound A. & V. train, having his vision obscured by the curve didn't see that switch train and run into it, would that be a disadvantage?

A. The curve is not great enough to keep the engineman from seeing the train.

Q. How far could he see it, how far down the track would the engineman's view, I speak of the engineman on the west bound A. & V. train, be obscured?

A. I couldn't answer that question. I can only testify that as he approaches the junction his view will begin, when he gets close to the junction.

Q. How far away would he be from the junction when his view is entirely blocked by the curve?

A. The best I remember it is a good distance.

Q. You couldn't give the distance?

A. No, sir.

Q. You wouldn't undertake to contradict the A. & V. engineman's statement, who runs on that road every day, that his view was materially blocked by that curve as he approached that junction?

Mr. Stone: We object to him asking him about contradicting another witness.

The Court: I don't think that is necessary. Let him state what he knows. I sustain the objection.

Q. Do you consider that your knowledge of that curve and the [fol. 809] effect it has on blocking the engineman's vision is as accurate and complete as the engineer who runs on that road daily?

A. I couldn't answer that.

Q. Do you consider that you know as much about it as a man who goes over it every day?

A. That is why I couldn't answer. I have never been on the locomotive going by there.

Q. If you had been the locomotive engineer going by there you would know more about it?

A. Certainly.

Q. And you would consider yourself in a much better position to judge the effect of that curve upon the view of the engineman at that point if you went over it every day?

A. Yes, sir, the greater the curve and the greater the length of the boiler, the greater his view is cut off.

Q. Would you consider that the opinion you have given as to that curve and its effect upon the vision of the engineman was as full as if you had been the engineman and operated on that curve every day?

Mr. Stone: We object——

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the court.

A. By handling the engine, the engineman gets to know more about the conditions on the road than any other man on the train.

Q. Now, Mr. Vick, I show you a map marked Exhibit "A" to the testimony of Mr. Duffee, or rather I show you a map marked Hayden "A" and call your attention on that map to the point marked "6", [fol. 810] do you see it?

A. Yes, sir.

Q. Now, that place shows the proposed point of junction, and then it shows to the west, closer to Jackson, it shows Curran's Crossing. That is the correct location is it not of Curran's Crossing, it is west and closer to Jackson?

A. Yes, sir.

Q. I show you now the map, Duffee "A," showing the line, the proposed line of the Jackson & Eastern going right directly into the line of the A. & V. Let's suppose, Mr. Witness, that you have these two roads just as you see them there, the main line of the A. & V. and the main line of the J. & E. running directly into it. Suppose that a train is coming out of Jackson coming east and wants to put a car on the J. & E. track. Describe in detail to the Court how that will be done?

A. He will pull up and stop his engine clear of the switch, cut his car off, head it in there and set it on the interchange.

Q. There is no interchange there. I asked you about the situation as it existed on this map?

Mr. Neville: We submit, if Your Honor please, that he is not confined to this map.

The Court: But if there is no switch there I think he can answer.
Mr. Neville: We except to the ruling of the Court.

Q. How would a train, an east bound train coming out of Jackson on the A. & V. Railroad lay out a car on the J. & E. rails if the J. & E. and the A. & V. are exactly as depicted on the J. & E. map, which is before you and Marked Exhibit "A" to Mr. Duffee's testimony?

[fol. 811] A. If there was no interchange tracks?

Q. No, sir, there is no interchange tracks, but the two tracks run just as this map shows, the J. & E. runs directly into the main line of the A. & V., with no interchange track?

A. It would be a matter of impossibility to interchange cars where there is no interchange track.

Q. Do you mean to tell me that it would be impossible for a train on the A. & V. coming from Jackson towards Meridian or east to lay out a car on this J. & E. track if there was no interchange track?

A. If there was no interchange switch to receive this car it would be impossible to set out cars in a switching movement if there was no interchange.

Q. You have stated that if the main track of the J. & E. runs into the main track of the A. & V. just exactly as set out on this map, Exhibit "A" to Mr. Duffee's testimony, I ask you if it is possible with such track arrangements as there depicted for the A. & V. train to lay out a car on the J. & E. track?

A. No, sir, it can't be done.

Q. Is there any interchange tracks on the blue print?

A. I don't understand the blue print.

Q. How long did you say you were in the maintenance of way department?

A. Four or five years.

Q. And you say that you cannot understand a blue print?

A. I am not familiar with this particular blue print.

Q. If there is anything peculiar about this blue print I would [fol. 812] like to know it, it is a Jackson & Eastern blue print?

A. I don't see anything wrong with it, but I just said I didn't understand it.

Q. Look at the blue print and tell me if it is impossible for you to understand from the blue print how the two tracks are to be joined there?

A. Explain this blue print to me.

Q. You explain it to me. You are a maintenance of way man and I am just a poor lawyer?

A. On this blue print it doesn't show the switch tracks that I see.

Q. All right, if there is no switch track, just two main lines joining one another at that point, running into each other, how would the A. & V. lay out a car on the J. & E. track?

A. If this interchange is completed——

Q. There is no interchange there?

A. I don't see any way then.

Q. If the condition is exactly as depicted on the blue print would it be possible for the A. & V. to lay out a car on the J. & E. track?

A. I think I understand the question now. There is no interchange track on this blue print, just this main line running into this other main line, then it would be impossible for the A. & V. Railroad to interchange cars on the J. & E. main line, because there is not anything to set it on.

Q. Is that your answer?

A. It would be impossible to deliver them if there is no inter-[fol. 813] change.

Q. You are sure it would be impossible?

A. I am sure it would, if there is only a J. & E. main line.

Q. What do you mean by a flying switch, or do you know of that?

A. Yes, sir, I have heard of it.

Q. What is a flying switch?

A. Well, it is a car that is given a hard knock with the engine to make it go out on another line and the brakeman coupling the car and then the train out running the car.

Q. Could a car be laid out on the J. & E. track from an east bound A. & V. train by the flying switch?

A. Yes, by the flying switch.

Q. It could be delivered in that manner?

A. That is the only way, with the flying switch.

Q. The only way it would be possible to lay out a car on the Jackson & Eastern line from an east bound A. & V. train, on the track as depicted here, would be by the flying switch?

A. That's right.

Q. I want you to explain to the Court just exactly what you would do if you wanted to make a flying switch from an east bound train coming out of the Jackson yards?

A. You would stop that train considerably to the east of the junction point.

Q. East?

A. Yes.

Q. And then what would you do about coupling or uncoupling?

A. Uncouple the cars that were going to make the flying switch, [fol. 814] uncouple the cars and release the air on the number of cars that were going to make the trip into the Jackson & Eastern.

Q. Uncouple from your train just what cars you wanted to lay out?

A. Yes.

Q. Uncouple the air just in front of the car?

A. Yes, sir.

Q. Then you would go ahead with your locomotive and get the car you wanted to lay out to moving fairly rapidly?

A. Yes, sir.

Q. And then what would you do?

A. Out run that car.

Q. Then you would have your car running pretty fast going down the J. & E. and would have your locomotive running faster still down the A. & V.

A. Yes, sir.

Q. All right. Now, then, would that operation you would have, your locomotive racing with that car be at a low or a high rate of speed across Curran's Crossing?

A. It would run at a high rate of speed.

Q. Would that increase or decrease the danger?

A. Such a movement as that would increase it.

Q. Increase it materially?

A. Increase it.

Q. Very materially?

A. Yes, sir.

Q. Now, Mr. Vick, suppose you came up to this point of junction [fol. 815] with that car that you are going to put off on the J. & E., where would you be relative to these trestles? As a matter of fact, you would want to do your coupling right on the east trestle or the west trestle, would you not?

A. That would be four or five hundred feet east of the end of the trestle. That would be sufficient distance to start your car.

Q. If you stopped in four or five hundred feet of it, where would you be relative to Curran's Crossing? Look on the map up here where it is marked Curran's Crossing, and that is where you would be, you would be right between the Devil and the deep blue sea?

A. It doesn't matter if you stop on the crossing if you are going to make a short switch, then just run your engine.

Q. What effect does it have on the crossing to stop on the crossing?

A. Not any.

Q. Doesn't it block the crossing?

A. You are not there long enough for the law to bother you.

Q. It would depend on the time you were there?

A. Yes, sir.

Q. You can't see the blue print?

A. I don't understand it.

Q. You can't see how far it is.

A. No, sir.

Q. So you can't tell where you would stop, whether on the trestle or not?

A. Unless I know how far the trestle was from the switch.

Q. How far would you have to run in order to get in that flying [fol. 816] switch, to get the movement in the car and out run the car with the locomotive?

A. With some engines it would be shorter, I would say 200 feet is a plenty on level track, owing to how many cars you have for making the running switch with.

Q. How much distance would you need from the hind end of the locomotive to the end car in a short switch?

A. Between 20 and 30 feet, between the hind end of the tender and the front end of the car.

Q. Suppose instead of one car you had 10 cars to put in that line where would you be relative to these trestles?

A. In a number of cars of that kind, that number, you would have to stop a greater distance back, to get yourself running.

Q. Over the trestle?

A. You would have to stop beyond the trestle.

Q. If you stopped your train a way back yonder beyond the trestle

what effect would that have on the distance your engine would have to back up for making the flying switch?

A. It would only cause a little more time, greater time to return from your train.

Q. It would cause a greater amount of time for running down of your switch?

A. Yes, sir.

Q. So, really, Mr. Vick, your testimony about the trestle is that you would obviate the difficulty by going back behind the trestle to do the work?

A. Yes, a movement of this kind, if there was no interchange there, in a case of this kind it would bother on account of the trestles [fol. 817] being there, being in the way.

Q. If you got your cars, if you wanted to get over the trestle, if you stopped with your cars over the trestle, and the man had to walk the trestle to do the work, would that be dangerous?

A. The engineman would have to use judgment in handling the train in stopping it, and not stop on the trestle.

Q. Why would he have to use judgment?

A. To avoid the trainmen having to work on the trestle, the trainmen having to stand on the trestle.

Q. Why is it objectionable for the trainmen to stand on the trestle?

A. Because it is dangerous.

Q. If you have a curve, a slight curve on perfectly level ground and the rear man away, the conductor or brakeman wants to signal to the train men, the engineman on the outside of the curve, if the curve is slight enough and level enough he walks out to give the signal?

A. Yes, sir, he could do that.

Q. Frequently that curve is on a fill. Does that interfere with him walking out to give the signal?

A. He would walk down the fill if there was no other way for him to give it.

Q. In the case I cited he would do what?

A. Generally walk down the fill.

Q. And to that extent that fill would be a disadvantage?

A. For that particular man making that particular movement.

[fol. 818] Q. It would also be a disadvantage in that the fill itself would stick out and come in between him and the engineman?

A. If this man walks out underneath the fill.

Q. The fill would get in his way?

A. He would be below there.

Q. And that would be a disadvantage?

A. Yes, of that particular movement.

Q. Have you got on the G. M. & N. any spur tracks?

A. Yes, sir.

Q. Which way do they run?

A. North and south.

Q. One end of the spur track is attached to the main line?

A. Yes, sir.

Q. They head only in one direction?

A. Yes, spur tracks head only in one direction.

Q. Let's take one that heads north, what do you mean by that?

A. It turns out to the north.

Q. You mean it points which way?

A. That is north.

Q. And the spur end is to the south?

A. Yes.

Q. Suppose you are coming with a south bound train down the G. M. & N. and want to lay out a freight car in one of these spur tracks headed north, you do that with a flying switch?

A. Sometimes and sometimes the car is carried ahead of the locomotive.

Q. If you- locomotive is coming south?

[fol. 819] A. It is run in there.

Q. With the flying switch such as you have before indicated?

A. The same thing.

Q. You do that quite frequently and everybody else does?

A. All the employees violates the rules sometimes.

Q. It is done frequently, you do it yourself?

A. Yes, sir.

Q. That is the only way you could do it?

A. Carrying it ahead of the engine is the safest.

Q. You wouldn't want to go down the track with your train ahead of the engine?

A. We do it.

Q. You don't want to do it if you can help it?

A. We try to do it the quickest way.

Q. I want to go back to that proposition. Suppose you are going to make a flying switch from the A. & V. by Curran's Crossing, carrying one car that you were going to lay out on the J. & E., and that car was five cars from the locomotive, what would happen then in regard to the trestle and the five cars?

A. Five cars?

Q. Yes, and you have got to run 200 feet, and you have 80 feet in the engine and tender, you have got how many feet to run, five cars are how many feet?

A. Five cars average from 36 to 40 feet.

Q. Let's say 40, that is easier for me to multiply?

A. That would be about 200 feet.

Q. And the 80 feet and the 200 feet you have to run, that would [fol. 820] make 620 feet, wouldn't it? Where would that put you with reference to the 400 foot trestle?

A. That would put you right near the trestle.

Q. Then what would you say as to that?

A. That would still give you plenty of room, because the five cars you are going to drop and the engine could handle that amount of cars.

Q. That 480 feet puts you on the trestle?

A. No, sir.

Q. You pull up within 200 feet of the junction?

A. Yes, sir.

Q. And the engine is 80 feet?

A. Yes.

Q. And your five cars 200 feet, that is 480 feet and you are going to drop the next car, the sixth car, and that car is where?

A. This car if he stopped his engine at the switch point it would be on the trestle.

Q. How would he cut it?

A. On the trestle.

Q. Is that dangerous?

A. It is dangerous sure, but it should not be on the trestle, it should be beyond the trestle.

Q. Suppose you stopped your engine 200 feet from the junction and wanted to put this car in the Jackson, that would put you on the trestle?

A. Provided you didn't have the car up next to the engine.

Q. You stopped this particular car?

[fol. 821] A. It should be stopped beyond the trestle.

Q. Then you would have to stop where?

A. 400 feet further.

Q. To be clear of the trestle then you would have to have your locomotive stop beyond the trestle, wouldn't you?

A. Yes.

Q. Then when your locomotive raced the car coming with good speed they would both come over Curran's Crossing?

A. Yes, sir.

Q. And that would be dangerous?

A. Yes, sir.

Q. Don't you think from the facts that I have indicated to you that the proposed point of junction has some objections?

A. If you are going to interchanges cars in that manner it would. But if this place——

Q. It is dangerous?

A. If this junction is provided with interchange track and no running switches made I don't say that it would be dangerous.

Q. You don't know where the Jackson & Eastern interchange is going to be?

A. No, sir, I haven't the slightest idea, the map don't show it.

Q. When making interchange tracks is the fact that the proposed junction is on a fill a benefit or a detriment?

A. I had rather have it than not to have it.

Q. Have you ever built a track on a 10 foot embankment?

A. No, sir.

Q. You say you had rather it would be on a 10 foot fill? You had [fol. 822] rather build a road on a fill?

A. If I was going to build it I had rather it would be on level ground.

Q. Why?

A. It is cheaper.

Q. Would it be easier to maintain on level ground?

A. Some.

Q. When you build interchange tracks between two roads and the two roads are on different levels, one is some higher than the other, what is the effect on the interchange tracks?

A. The interchange tracks should be built to conform to the other tracks.

Q. Which one?

A. The high one.

Q. So the interchange tracks would have to be more expensive?

A. Just as expensive as the main line.

Q. Now, do you mean to tell the Court that it is customary to cut these small off sets you spoke of, or nicks, in the main line rails, in order to accommodate the switch points?

A. It is customary.

Q. To cut the nicks in rail of the main line?

A. Yes, sir, in the main line. In the turn out rail, there is an off set shoved in this rail, a place for this point to lay in, which makes kind of an off set, the off set shoves the wheel away from this point.

Q. What I am asking you, is, do you mean to leave the impression on the record that it is customary to do that in the main line rail?

[fol. 823] A. In the rail of the main line that turns out. It is the main line rail until it reaches this point and turns out.

Q. Do you know any point on the A. & V. Railroad where there is any such off set in the main line?

A. Just as it turns out.

Q. Do you know whether or not there is any place on the A. & V. Railroad where there is such an off set as indicated by you?

A. I have never examined the A. & V. switches. All good railroads have them. I am sure the A. & V. does.

Q. Let's see something about that. You testified that you were in the maintenance of way department for a period of four or five years?

A. Yes, sir.

Q. With what maintenance of way department?

A. With the Northeaster and the Gulf & Ship Island.

Q. What was your title?

A. I was bridge carpenter and bridge assistant foreman.

Q. When you went with the Gulf & Ship Island?

A. Bridge foreman.

Q. When you commenced?

A. Assistant foreman.

Q. Of what?

A. Bridge foreman.

Q. On what road?

A. With the No. & N. E., then with the G. F. & A.

Q. How long a line of railroad is that?

A. The G. F. & A., it is 142 miles, with some branches and small lines.

[fol. 824] Q. Then you were with the M. & M.?

A. Yes, sir bridge foreman.

Q. That was Mr. Sam Neville's road?

A. Yes, sir.

- Q. He was your employer at that time?
- A. He left me in the employment of the maintenance of way department.
- Q. How long a road is the Meridian & Memphis?
- A. 33 miles.
- Q. What was your title with the M. & M.?
- A. I was bridge foreman awhile and conductor awhile.
- Q. Did you have anything to do with the construction of switches while you were bridge foreman of the Northeastern?
- A. No, sir.
- Q. Is the construction of bridges in line with the bridge foreman?
- A. There are switches on bridges that the bridge foreman has got to prepare for, the bridges they are to built upon.
- Q. But you had no control governing the making of them?
- A. No control of the laying of the switches. The trackmen do that.
- Q. Why did you leave the Northeastern?
- A. Looking for more money.
- Q. Why did you leave the T. & P.?
- A. The cane hauling gave out.
- Q. In other words the work was over?
- A. The job was over.
- Q. Why did you leave the G. & S. I.?
- [fol. 825] A. I got fired.
- Q. Why did you leave the M. & M.?
- A. They added more mileage to me, it is the same road.
- Q. Now, why is it that the outside of a rail is super elevated?
- Mr. Vick?
- A. To take care of the speed of the train.
- Q. In what way?
- A. The faster the speed the greater the elevation and the stiffer the curve the greater the elevation.
- Q. What effect does the making of this elevation of the outside rail have?
- A. It throws more force against the outside rail. If the train comes with high speed it throws the force on the outside rail.
- Q. Suppose you split the outside rail with a switch, what is the tendency in case a train comes around the curve with a high speed?
- A. Not anything, if it is a good fitting switch.
- Q. Where is the flanges laying against this switch?
- A. Against the rail.
- Q. If the rail is split is there any tendency for the flanges to catch in that switch?
- A. If the switch is properly set in there is not.
- Q. You mean so far as you are concerned that you had as soon have the switch on the outside of the rail as any where?
- A. I see no difference. I just as soon have the switch on the outside rail as on the inside rail.
- Q. You are no engineer?
- A. No, sir.
- Q. Did you ever hear of a train getting its flange points in the

[fol. 826] switch and splitting the switch or off set as you called it?

A. Yes.

Q. Have you frequently heard of such accidents?

A. Not frequently, but I have heard of it.

Q. It does happen?

A. Yes, sir.

Q. Of course, it won't happen if there is no switch there for it to split?

A. No, sir.

Q. It wouldn't happen if this switch was not on the outside of a curve?

A. No, sir.

Q. So to that extent the danger is increased by having the switch on the outside of the curve?

A. If the switch is badly kept.

Q. Did you ever hear of the point of a switch breaking off and making a place in that way for the flanges to grind in the edge of inside rail of a switch?

A. I don't recall a case of that kind, but it could be.

Q. Can you cite me to any point on the Northeastern Railroad where there is a switch on a bridge?

A. No, sir, I cannot.

Q. Can you tell me any point on the Northeastern where the main line is recessed to take a switch point or off set?

A. I don't remember.

Q. And there is no such thing on the A. & V. anywhere?

A. I won't say, I hav-n't examined to see.

[fol. 827] Q. Can you tell me where there is such an off set on the G. M. & N.?

A. All main lines have such off sets for switches.

Q. All of them?

A. A portion of them, I have noticed a portion of them.

Q. I would like for you to give me the name and place on the G. M. & N. something more specific, where there is a notch cut in the main line rail?

A. Not a notch, a small bend of the rail, not a notch.

Q. You mean bend the rail to run the switch?

A. Yes, sir.

Q. Where is that?

A. At Union, the nearest point here.

Redirect examination by Mr. Stone, for the defendant:

Q. Mr. Vick, have you ever heard of a train dump on level or straight track?

A. Yes, sir, I have.

Q. Well, this map that you have been talking about, is this a blue print of interchange tracks?

Mr. Monroe: We object, the map speaks for itself?

The Court: I would like for them to explain it to me.

Q. Is there shown on the blue print any interchange tracks.

A. No, sir.

Q. A switch yard?

A. No, sir.

Mr. Monroe: And we further object as he says he don't understand the blue print.

[fol. 828] The Court: Let him state what he knows.

Q. Will you tell His Honor whether any reputable road would deliver cars to another road without interchanges tracks?

Mr. Monroe: We want to call attention to the fact that there was nothing in the condemnation proceedings about any interchange tracks.

The Court: I overrule the objection.

Mr. Monroe: I expect to the ruling of the Court.

A. No, sir, they would not.

Q. Is it customary for the interchange tracks to be located on the line of the delivering road?

A. Yes, sir.

Q. What are exchanges, or interchanges?

A. It is a receiving and a delivering track where cars are delivered from one road to another.

Q. State to the Court whether or not it is part of the switch connection?

Mr. Monroe: We object, he is not an engineer, and he is being called on to give an opinion.

Q. I withdraw the question. You testified about the danger of this flying switch. State whether or not if there is any interchange track at all it will be necessary to make a flying switch?

A. No, sir.

Q. State whether the danger you have testified about in answer to Mr. Monroe would exist in case there were interchange tracks?

Mr. Monroe: We object.

Q. The question Mr. Monroe asked you about starting beyond the bridge and running fast, that was for what purpose?

[fol. 829] A. That was to make a running switch from across here and back in the train where the engine was standing between the river bridge and this highway crossing.

Q. Is such an operation necessary where a switch track is provided?

Mr. Monroe: We make the same objection, he is not an engineer.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. No, sir.

Q. Is it against the laws of the State of Mississippi to make a flying switch?

Mr. Monroe: We object, this man has certainly not qualified as a lawyer.

(Witness excused.)

[fol. 830] S. A. NEVILLE, having been called and duly sworn, testified as follows for and on behalf of the defendant, to-wit:

Direct examination by Mr. Stone, for the defendant:

Q. What connection have you with the Jackson & Eastern Railroad Company, Mr. Neville?

A. Originator, President and general Manager.

Q. Have you got a charter of the railroad?

A. I have.

Mr. Stone: We would like to introduce a copy of the charter, or in lieu of the original, a copy?

Mr. Monroe: We object to it as being incompetent, irrelevant and immaterial, and as having no bearing on this at all.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court, but we have no objection to it being a copy.

Mr. Stone: We introduce the charter of the Jackson & Eastern Railroad as Exhibit One to the testimony of S. A. Neville.

[fol. 831] Q. Is that recorded, that charter recorded as required by law?

A. It is.

Mr. Monroe: The record is the best evidence as to that.

By Mr. Stone:

Q. Does the copy show the recording of it?

Mr. Monroe: We object, the document speaks for itself.

Q. Does the copy show that?

Mr. Monroe: We object, it is not a copy unless it shows everything on the document it is a copy of.

The Court: I don't think the introduction of the charter has any bearing on it, but you can introduce it, but I will sustain the objection as to the questions about it.

By Mr. Stone:

Q. What are the termini of the Jackson & Eastern Railroad?

A. Union, Newton County, Mississippi, and Jackson, Hinds County, Mississippi.

Q. Mr. Neville, did you as President of the Jackson & Eastern bring this eminent domain suit?

A. I did.

Q. Before bringing the eminent domain suit state whether or not you tried to have an agreement with the Alabama & Vicksburg Railroad touching this connection?

A. I did.

Q. State whether or not you were ever able to reach an agreement with the A. & V.?

A. I have not been for this place.

Q. State whether or not you made that effort before filing the eminent domain proceedings?

[fol. 832] A. I did.

Q. Mr. Neville, what effort, if any, did you make about getting to Jackson before filing this eminent domain suit?

Mr. Monroe: If the Court please, if that effort was in writing I ask that the letters be produced.

Q. Please state what effort you made to get into Jackson with your railroad before filing this eminent domain suit?

A. When I began the construction of the Jackson & Eastern, I was operating under, solely under a charter granted me by the State of Mississippi, and I built thirteen miles of line from Union to Sebastopol.

Q. In what year?

A. In 1916 and 1917.

Mr. Monroe: I don't see what the history of the road has to do with this suit.

The Court: I reckon he can give the history of the road.

Mr. Monroe: We except to the ruling of the Court.

By the Witness:

A. When the War started I stopped the construction work until after the Armistice was signed and after I resumed the project I was confronted with the Transportation Act of 1920.

Q. You had to conform to the Transportation Act?

A. I had to build in accordance with the Transportation Act. So I made an application—

Q. Have you your application?

A. I have.

Q. Produce it?

[fol. 833] A. I will.

Q. What have you before you?

A. I have a copy of my application to the Interstate Commerce Commission for a certificate for public convenience and necessity and authority to carry out my original plan.

Mr. Monroe: We object to this, it is not a certified copy, but just a plain carbon copy.

Q. I will ask you to state whether or not this is a carbon copy of your petition?

A. It is.

Mr. Monroe: The best evidence would be a certified copy from the Commission's records. And we object to this document.

The Court: I reckon he can prove it by getting a certified copy.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. I will ask you to state whether or not that application was acted upon?

Mr. Monroe: If it was it was in writing, and that is the best evidence.

The Court: I overrule the objection, and will let him answer the question.

Mr. Monroe: We except to the ruling of the Court.

A. It was, and I have a copy of it in Finance Document Number 9.

Q. Furnished you by whom?

A. George B. McGinty, Secretary of the Interstate Commerce Commission.

Mr. Monroe: We object on the ground that the original is the best evidence.

[fol. 834] Mr. Stone: We are fixing to produce it.

Q. From whom did you receive this?

Mr. Monroe: I object to the question until I have properly examined it. And I object to this because it is not a certified copy, and I don't know whether it is a correct copy or not.

The Court: That is true. I expect you had better get the certified copies.

By Mr. Stone:

Q. Mr. Neville, have you certified copies of the decision of the Interstate Commerce Commission in the matter in your files?

A. They have never furnished me a copy. That is the authority I received.

Q. You received this from the Commission?

A. Yes, sir.

Q. From whom?

Mr. Monroe: We object. The acts of the Commission are in writing and a certified copy of them are the best evidence.

A. I received it in an envelope of the Interstate Commerce Commission through the United States mail.

Q. Have you the letter accompanying it, or did a letter accompany it?

A. I received no letter, that is, so far as I know, just the decision and the certificate.

Mr. Stone: We desire the Court's permission to let us get certified copies and substitute them.

The Court: All right.

Mr. Monroe: We object.

[fol. 835] Q. We now offer a copy of the proceedings of the Interstate Commerce Commission as Exhibit One to your testimony and ask that the stenographer mark it as Exhibit One to your testimony?

Mr. Monroe: We object to the document on the ground that it purports to be a certified copy, when it is only a plain copy.

The Court: I sustain the objection.

Mr. Stone: We except to the ruling of the Court.

Mr. Stone: I ask leave of the Court for permission later if I can get it to file in the record a certified copy of the ruling of the Interstate Commerce Commission.

The Court: I will allow that, but I am not going to allow this evidence.

[fol. 836] By Mr. Stone:

Q. Mr. Neville, you say you hav-n't a certified copy of your application?

A. No, sir.

Q. Have you a carbon copy of your application?

A. I have in my office. I thought I had it in my files, but I don't seem to find it.

Q. But you have it in your office?

A. Yes, sir.

Q. Mr. Neville, what route did you locate the road, towards Jackson to what point?

A. I first asked for authority to build it along general lines, not specifically designated.

Mr. Monroe: If the Court please, he is attempting to give the contents of a document filed with the Interstate Commerce Commission, and we insist that a certified copy of the document is the best evidence.

Mr. Stone: He never got any decree.

The Court: I will exclude it, but I will allow you to get it in the record.

By Mr. Stone:

Q. Did you have a conference with the Interstate Commerce Commission touching the route of this road?

A. I did.

Q. I will ask you to state what occurred in that conference with reference to the road?

Mr. Monroe: We object, the proceedings are record proceedings, [fol. 837] and a certified copy of the proceedings is the best evidence.

The Court: That is right.

By Mr. Stone:

Q. Where did you locate your road finally?

A. According to the maps shown here (give- attorney blue prints)——

Q. Mr. Neville, the map that you have just handed to me shows that——

Mr. Monroe: We object to the question on the ground that the map is the best evidence.

Q. I just asked him what it was.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. Copy of the map accompanied my application to the Interstate Commerce Commission for a certificate of public convenience and necessity.

Q. That map shows the terminus of the road towards Jackson to be where?

Mr. Monroe: We object, the map speaks for itself.

A. It shows the connection with the A. & V.

Q. At what point?

A. At the point shown by the eminent domain proceedings filed.

Mr. Stone: We offer the map in evidence and ask that the Stenographer mark it as Exhibit "2" to the testimony of S. A. Neville.

Mr. Monroe: We object to the map as being incompetent, irrelevant and immaterial.

The Court: I will allow it.

[fol. 838] By Mr. Stone:

Q. Tell the Court why your road was located to make a connection as shown on the map at Curran's Crossing?

A. I made that location in carrying out my ideas of building a railroad to develop Pearl River Valley and the southern portion of Leake County along the line that I thought would be approved by the Interstate Commerce Commission, having in consideration the provisions of the Transportation Act.

Q. What engineers did you have to select and locate this line?

A. I employed L. W. Duffee and P. L. Stacker, two experienced engineers and instructed them to locate this line along the most practical route, making a connection with the A. & V. Railroad at the first practical point east of Pearl River.

Q. Mr. Neville, there has been suggested here a point of connection at Pearson. Do you know where that point of connection is?

A. In a general way I do.

Q. Tell His Honor, what objections, if any, there are to the junction at that point?

A. There is no business there, no economic justification of a line there.

Q. No economic justification of that line?

A. I don't believe the Interstate Commerce Commission would approve such an application.

Q. Why?

A. My understanding from a conversation I had——

Mr. Monroe: We object to any conversation held out of the presence of the Complainant.

[fol. 839] The Court: Objection sustained.

A. My knowledge of the transportation Act, and what the idea of the present system is——

Mr. Monroe: We want to object to any construction of law by the witness, he is merely construing the Transportation Act. We object to the opinion of this man, who is not a lawyer.

The Court: I will let Mr. Neville go on and see what it is he is going to say.

Mr. Monroe: We except to the ruling of the Court.

A. So many other lines of railroads have been built and later on petitions have been filed for the abandonment of the road, causing a hardship on the people who had gone into business along the lines, that the Transportation Act provides that in the future no railroad shall be built with the authority of the Interstate Commerce Commission, unless the railroad is so located and constructed that it can become a link of another road and can be made permanent and profitable in its operations no authority can be obtained for its construction. In other words if a railroad is dependent upon the ton-age it originates its life is of short duration, whereas if it is so laid out and projected so it can serve the territory and become a link in the consolidation of the present system, then there is no chance of filing a petition for abandonment.

Q. How long have you been building railroads?

Mr. Monroe: We move to strike out the above answer, as the witness is attempting to construe the federal law, when he is not a lawyer and he is not qualified to give an opinion on the law.

The Court: I will let it go in.

[fol. 840] Mr. Monroe: We except to the ruling of the Court.

Q. What experience have you had in building short line railroads?

A. I have been building and operating short line railroads for the past 12 years.

Q. State whether or not you have been in touch with other builders of short lines?

A. I have.

Q. State whether or not you are familiar with the problems they have to meet?

A. I am thoroughly familiar with them.

Q. Are you a member or not of the short line railroad association?

A. I am.

Q. Mr. Neville, you stated while ago that there was no economic justification for a railroad being built to the junction at Pearson. Will you explain to the Court why?

A. There are already two short line railroads south of Jackson, and it is shown that they will become weaker and weaker as the forest products disappear which primarily they were built to handle, and unless these two short line railroads south of Jackson can be connected up with a northern trunk line it will only be a question of a few years when they will both be before the Commission asking for abandonment. My construction into Jackson would connect the northern link with the two southern lines and would mean a permanent and profitable operation and a successful career.

Q. I understand that in order to make the road profitable depends on the connection you make?

A. Not only to make it profitable but to make it acceptable to the [fol. 841] Commission.

Q. It depends on what?

A. Not only on the ton-age it originates on its own line, but to be a possible link in a trunk line, north or south, and take care of some other short line railroad already existing.

Q. Does the point at Pearson give such a connection?

A. Absolutely not. All the business at Pearson is taken care of by the A. & V. There is no necessity for another railroad at Pearson, and there is no south line at Pearson.

Q. State to the Court whether or not in your judgment a railroad running to Pearson would meet with the economic justification required to construct a railroad?

Mr. Monroe: We object to that.

A. From a financial standpoint and my knowledge of the *the* situation and location I would not undertake to finance, build or construct a railroad into Pearson, Mississippi.

Q. State whether or not, taking the line as projected by these gentlemen at a point near Pearson, state to His Honor what chance if any, you would have to float bonds to raise the money to finance a road there?

Mr. Monroe: We object to this entire line of testimony. We are trying the case on whether or not it is a proper place to make a junction.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Mr. Monroe: It is understood that we are objecting to all this line of testimony, with the same ruling by the Court, and our same [fol. 842] exceptions to his ruling.

A. The A. & V. has no, doesn't reach any Ohio River crossing, but has to divide its freight rate with other carriers, so it would be impossible and impractical for them to allow the J. & E. a division of rates that would make it profitable for the J. & E. to operate.

Q. You mean from Pearson?

A. From Pearson.

Q. Mr. Neville, I will ask you to state to the Court whether or not you would be able in your judgment to float bonds to build such a line?

A. I know that I could not.

Q. Why?

A. Because there are no financial interest at Pearson, in Pearson that would be interested in such a proposition, and no financial institution would look with favor upon any such construction.

Q. State what inducement there is to carriers to have stuff shipped to Pearson over that line?

A. There is no movement to Pearson that can't be taken care of by the A. & V.

Q. State whether or not it would be feasible to build a road, change the line according to the map shown by the complainant, making your connection at Pearson?

A. You mean physical?

Q. No, financial?

A. Not only would it not be financial practical, but I have no authority to change from the order of the Interstate Commerce Commission [fol. 843] mission.

Q. Have you any authority to build to Pearson?

A. I have not.

Q. You had this up with the Commission?

A. There was a public hearing by the Interstate Commerce Commission on the question of this location as shown by this map I have introduced.

Q. I want to ask you, did the A. & V. Railroad have notice of that hearing?

Mr. Monroe: We object.

The Court: I sustain the objection.

Q. Let's see the letter from the Interstate Commerce Commission. Did the A. & V. Railroad have notice of the hearing before the Interstate Commerce Commission?

Mr. Monroe: We object, the document is the best evidence.

Mr. Stone: We offer the letter, if the Court please, which shows that it is a letter from the Interstate Commerce Commission stating they did have notice.

Mr. Monroe: We object to the statement of counsel as to what is in the letter.

Mr. Stone: We will read the letter to the Court.

And now, having read the letter, we offer it as Exhibit "3" to the testimony of S. A. Neville.

[fol. 844] Q. I now ask you if the A. & V. had notice of the hearing?

Mr. Monroe: I want to make an objection to the letter, because the best evidence would be a copy of the notice and the returns thereon, and we object for the reason, that if the notice was served, if any there was, it would show that the application was to go to Jackson and not to Curran's Crossing.

The Court: If that is true, then I will not permit it to go in.

Mr. Monroe: It was to go into Jackson instead of Curran's Crossing and we object to it.

The Court: Have you the notice, Mr. Stone?

Mr. Stone: We haven't it.

The Court: I will have to exclude it.

By Mr. Stone:

Q. Mr. Neville, how long did this hearing go on?

A. It was for more than a year.

Q. Was there any effort on your part to get into Jackson in any way except by Curran's Crossing?

A. This is the only plan I have had, the records of the Commission will show—

Mr. Monroe: We object to any testimony with reference to the records of the Commission.

The Court: That is correct.

Q. The question I asked is whether the plan that was before the Commission was to go by Curran's Crossing?

A. It was.

Q. I will ask you what authority you had, if any, from the Commission to build to Pearson?

[fol. 845] A. None whatever.

Q. I will ask you to state what authority you had from the Interstate Commerce Commission to build north of Curran's Crossing, north up the River?

Mr. Monroe: I don't like to make these objections, but I do think this is objectionable.

The Court: It seems that it is secondary evidence, but I will overrule your objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Have you any authority from the Interstate Commerce Commission to build north of this point, north of Curran's Crossing?

A. I have not.

Q. Now, Mr. Neville, what are the objection-, if any, to the point suggested, the point north of Curran's Crossing?

A. It imposes a terminal cost that is impractical for short line operations.

Q. What do you mean by that, what would the cost consist of?

A. A bridge across Pearl River and the swamps, and the terminal facilities in Jackson. It would bring up the same situation I had in building the M. & M.

Mr. Monroe: We object to any testimony about the M. & M.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. I was forced, if I was forced to the expense of crossing Pearl River north of Jackson with an independent bridge, it would cost

to get into Jackson in the neighborhood of 150 thousand dollars, which would be a duplication of the situation that confronted me [fol. 846] at Meridian when I built the M. & M. when there was forced upon me such a similar cost of about \$150,000.00.

Mr. Monroe: We now renew our objection to any reference to the Meridian & Memphis, and ask that it be stricken from the record, as irrelevant and immaterial.

The Court: Don't you just want to show whether or not a junction at Curran's Crossing is dangerous?

Mr. Neville: But that is not the only question as decided by the Supreme Court.

Mr. Monroe: We object to the testimony, as it doesn't prove any issue set out in the pleadings in this case, which is shown by Paragraph Nine of the pleadings, as follows, this respondent does not know whether the complainant was advised that it would be the purpose of this respondent in beginning the said eminent domain proceedings was not only to effect a junction of its road with the railroad of the complainant, the A. & V. Railway, but that this respondent also designs and proposes to run its trains, locomotives and cars over the main line of the A. & V. Railway Company and over its bridge across Pearl River and to use the station facilities of the said A. & V. Railway Company, its side tracks, switches, et cetera, in the City of Jackson, Mississippi, for its own purposes, but this respondent states the fact to be that it has no such purpose, and further in Paragraph 11 is, This respondent states and shows that the fears expressed by the complainant in their bill as to the danger of said junction is wholly imaginary and have no foundation whatever. In fact said fears are as baseless as the allegation contained in said bill touching the purpose of this respondent to use the main line, bridge and terminal facilities of the A. & V. Railway Company. [fol. 847] And we further object to this line of testimony because it is not now in the mouth of this defendant to change the entire line of testimony that has been repeatedly urged during the course of this trial.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Mr. Neville, what other expense would there be attached to it?

Mr. Monroe: We object.

The Court: I am inclined to think that this is not proper evidence, but I will admit it.

Mr. Monroe: We except to the ruling of the Court.

A. I next would have this proposition to meet, Congress says to the Interstate Commerce Commission you must permit the railroads to earn a sufficient revenue on the capital invested in serving the public, and it furthermore charges that in order not to tax the public to sustain capital invested you must not permit a duplication of facilities, a duplication of capital invested. I have always doubted,

and I doubt now that the Interstate Commerce Commission would permit the Jackson & Eastern Railway Company to issue securities to duplicate the facilities already existing.

Mr. Monroe: We renew our objection, and further object because this is the opinion expressed by a layman giving his opinion about an act of Congress, which is plainly improper and immaterial and not the best evidence.

[fol. 848]

Tuesday, January 22, 1924—8:30 a. m.

It was at this time agreed between counsel for both sides that the testimony of Mr. S. A. Neville may be discontinued at this time in order to take the testimony of other witnesses.

[fol. 849] R. B. DENSON, having been called and duly sworn, testified as follows for and on behalf of the defendant, to-wit:

Direct examination by Mr. Stone, for the defendant:

Q. Give your initials to the stenographer, please?

A. R. B.

Q. Mr. Denson, where do you live?

A. In Leake County.

Q. How far do you live from Walnut Grove?

A. I live five miles.

Q. In what direction?

A. West.

Q. How far do you live from Lena?

A. Six miles.

Q. In what direction?

A. Nearly east.

Q. How far do you live from the line of right of way of the Jackson & Eastern?

A. Right on it.

Q. Mr. Denson, how far is it from this line of railroad as projected south to the A. & V.?

A. 21 miles.

Q. How far west or north is it to a railroad line?

A. 35 miles.

Q. To what point is that?

A. Canton.

Q. How far is it north?

A. 36 miles.

Q. To what point?

[fol. 850] A. Kosciusko.

Q. Mr. Denson, do you remember a hearing that was held in Jackson before the Railroad Commission touching the interest of this road?

A. Yes, sir.

Q. Did you testify at that hearing?

A. Yes, sir.

Q. Mr. Denson, I want you to tell the Court what trouble, if any you have in reaching a railroad from your place either north, east west or south?

A. Any railroad?

Q. Yes?

A. The trouble I have at this time?

Q. In a general way?

A. When the roads are in good condition we don't have any trouble except the distance.

Q. What about it at this time of the year when the roads are in the condition they are in now?

A. They are mighty near impassable all the time, except with wagons.

Q. What kind of country does this railroad run through?

A. With reference to what?

Q. Leake County there in your neighborhood?

A. It is agricultural and a timber country.

Q. What is the character of the soil?

A. It varies, but it is of a productive nature. It is a generally hilly country, ridgy.

Q. How does your land compare with other lands?

[fol. 851] A. Very favorably. I think we have the best country in the state.

Q. What about the population?

A. It is thickly populated.

Q. Mr. Denson, State to His Honor whether or not there is any interest for the people of your county for a railroad line to Jackson?

A. Why they are very interested in a line to Jackson. That is the capitol city and one of the best markets of the state, and for that reason we want to be connected with a railroad center.

Q. Have you any railroad in Leake County other than the J. & E.?

A. That is all and it just touches it.

Q. Have your people of Leake County not been trying to get a railroad, and if so how?

A. They attempted to float bonds, had an election back in the 80's, but by some means the railroad went somewhere else. We have had railroad surveys, but they were all dropped some how;

Q. Do you know where Curran's Crossing is?

A. Yes, sir.

Q. Do you know where this proposed junction with the A. & V. is?

A. Yes, sir.

Q. State to the Court whether or not the road of the J. & E. running to that point, with a depot established there by the J. & E. would serve your county acceptably?

A. It wouldn't.

Q. At Curran's Crossing?

A. Yes, sir.

Q. You understand that you would be how far from Jackson?

[fol. 852] A. About $\frac{3}{4}$ of a mile.

Q. What kind of a road from there to Jackson?

A. Hard surface road.

Q. Suppose this road was turned some miles back this side of Curran's Crossing along this line, and turn south or in a southerly direction to Pearson, or a point near Pearson, state to the Court whether or not that point would serve Leake County, with that point as a railroad junction?

Mr. Monroe: Here is a gentleman who does not claim to be an expert, who has not qualified as an expert being called on to give his opinion was to whether a railroad going to Pearson would serve the people of Leake County, and we object to it.

By Mr. Stone:

Q. What is your occupation, Mr. Denson?

A. Farmer.

Q. How long have you lived in that community?

A. Practically all my life.

Q. Are you familiar with the conditions of Leake County generally?

A. Certainly I am.

Q. Do you know where Pearson is located on the A. & V.?

A. Yes, sir.

Q. State to the Court whether or not this line of railroad is turned down to Pearson would meet the needs of the Leake County citizens?

Mr. Monroe: We object to him speaking for the citizens of Leake, and because he has not qualified as an expert.

The Court: I reckon it is necessary for me to have the assistance of [fol. 853] someone, but strictly speaking I don't think it is admissible.

Q. Mr. Denson can you state as a citizen of Leake County how the county is situated in regard to the A. & V.?

Mr. Monroe: We object.

Q. Mr. Denson, have you talked with your neighbors in the county about this railroad?

A. Yes, sir.

Q. Mr. Denson, have you discussed this railroad proposition with your neighbors and the citizens of Leake County?

A. Yes, sir.

Q. Do you know how they feel about it, what they desire?

Mr. Monroe: We object to what they desire. This is a question for the Court to decide, and not a question as to the sentiment of the people.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Do you know what your neighbors think about it?

A. Yes, sir.

Mr. Monroe: It is understood that we make the same objection to all of this line of testimony, with the same ruling by the court and with our same exceptions to his ruling.

Q. To what point is there a desire or a demand of the people of Leake County for a railroad to Pearson or to the point of this proposed junction?

Mr. Monroe: Here is a man from Leake County undertaking to testify ~~what the other people in the county desire, people who are~~ [fol. 854] not here for cross examination, and the testimony is irrelevant, incompetent and immaterial and we object to it most strenuously.

The Court: I don't think he can testify as to what they think.

Q. Let me change my question. I don't want to crowd anything on Your Honor you don't think is competent. Take yourself, Mr. Denson, with your knowledge of Kemper County——

A. Leake County.

Q. I beg your pardon. What demand or public necessity from a standpoint of your county is there for a railroad to Pearson?

Mr. Monroe: We object, he has not qualified as a Chancellor, yet he is asked to decide this case.

The Court: I will let it go in, but I don't think it has but little probative value.

Mr. Monroe: We make the same objection to this entire line of testimony.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. All right, from your standpoint as a citizen of your county, what demand is there for a railroad to Pearson?

A. None that I know of.

Q. State to His Honor, whether or not Pearson is a market?

A. No, sir, it is not a market, just a little village.

Q. State what there is at Pearson that would lead the citizens of your County to want to go to that point?

A. Nothing.

Q. You stated that your county was an agricultural county. Is there any timber in there?

[fol. 855] A. Yes, sir, lots of timber.

Q. Along the route of the railroad?

A. Yes, sir.

Q. Take the conditions as they are without a railroad, and tell His Honor whether the people of your county are able to get the value of their timber without a railroad?

A. No, sir, they can't do it.

Q. What about Jackson as a market?

A. It is a splendid market, one of the best in the state.

Q. What about Jackson as a market for your agricultural products?

A. It is a good one.

Mr. Monroe: I want to call attention to the fact that this gentleman has not qualified as an expert, he has stated repeatedly that he is a farmer, yet he is being asked to give his opinion on whether or not timber products can be properly marketed without a railroad and he has not shown that he owns any timber, or has ever owned any timber, or has ever sold any timber, and frankly speaking we don't think he does own any timber.

Mr. Stone: Why?

Mr. Monroe: He stated that he was a farmer.

By Mr. Stone:

Q. Do you own any timber?

A. Yes, sir.

Q. How much?

A. 800 acres.

Q. Of timber?

A. Yes, sir.

[fol. 856] Q. What kind of timber?

A. Both hardwood and pine.

Q. Could you sell that timber to an advantage without a public carrier?

A. No, sir, I have not been able to sell it.

Q. Tell the Court if you have tried to sell it?

A. We have tried from every standpoint, tried saw milling, but the expense of hauling it by wagon took up all the profit. I have been trying to sell it for 20 years.

Q. Without a railroad what value is your timber?

A. None, just an expense.

Q. Are there any mill or lumber roads running in there?

A. No, sir.

Cross-examination by Mr. Monroe, for the complainant:

Q. Mr. Denson, is Curran's Crossing a market for agricultural products?

A. No, sir.

Q. What you really want in your country is a railroad into Jackson?

A. That is it.

Q. A railroad to Curran's Crossing wouldn't do any more good than a railroad to Pearson?

A. Yes, sir.

Q. If it stopped at Curran's Crossing?

A. Yes, it would do more good than the other place.

Q. Suppose you have a railroad to Pearson connecting with another railroad from Pearson, you could move your timber into Jackson?

[fol. 857] A. By going over two miles.

Q. Coming from your county to Pearson to go to Jackson, you would have to move over two lines?

A. Yes, sir.

Q. And all of your timber and agricultural products that went from your county to Jackson by Curran's Crossing would have to move over two lines?

A. Yes. No, sir, it wouldn't be necessary for the agricultural products.

Q. Why not?

A. Because it could be trucked into Jackson.

Q. But if you wanted to move by railroad you would have to move it over two lines?

A. Yes.

Q. Of course it could be trucked from Pearson?

A. Not hardly, the conditions are not so good.

Q. Ar-n't the roads from Pearson to Jackson good roads?

A. I don't know.

Q. You don't know?

A. There is a good road from Curran's Crossing.

Q. I mean the road from Curran's Crossing to Pearson?

A. It might be a good road part of the time, but it is like a heap of other highways, it is in a bad condition a heap of the time.

Q. When was the last time you went over the road from Curran's Crossing to Pearson?

A. About 12 months ago.

Q. You don't know how the road is now?

[fol. 858] A. I know the conditions of several roads, we have had some bad weather.

Q. There is a concrete road part of the way from Pearson?

A. It is all the way from Curran's Crossing to Jackson.

Q. And part of the way to Pearson?

A. I think so.

Q. It wouldn't be a great deal of expense to carry the concrete road to Pearson if the railroad went there?

A. I don't know what it would cost, but it would be a great deal. It would be a right smart.

Mr. Stone: We object to him asking the witness the cost of public highways.

Q. Would it be satisfactory to you to have the Railroad to run to Curran's Crossing without a connection?

A. We had rather have the connection.

Q. Why?

A. Then we could go straight on in. I had rather have the connection at Curran's Crossing, the closer the better.

Q. Do you know what the distance is from the proposed junction at Curran's Crossing to the proposed junction to the west of Pearson?

A. No, sir, I don't know that accurately.

Q. Therefore, you don't know how far it would be to Jackson?

A. I know approximately.

Q. About how far is it?

A. Three or four miles, or five miles.

Q. If I told you that it was not three or four or five miles, but

somewhere between two and two and a half miles, would that change [fol. 859] the situation any?

A. If you know, I suppose you are right.

Q. As a matter of fact, Mr. Denson, you don't know where the junction point suggested by the A. & V. is, do you?

A. No, not the exact point. I have information that it is some where near Pearson.

Q. Mr. Denson, let me ask you this, would you prefer a line of railroad with a junction with the A. & V. at a place which was free from the floods of Pearl River, and therefore would be open to you all times of the year, or would you prefer a junction which was subject to floods and would therefore be washed out part of the time each year?

Mr. Stone: We object to the question and move to strike it out.

The Court: I sustain the objection.

Q. Mr. Denson, would you prefer a road connection with the A. & V. which was subject to periodic floods or a place which was free from the floods?

A. I don't just exactly know how to answer that, I am not an engineer, as you have stated I am not an expert, if there is going to be washouts, then I wouldn't like a place subject to washouts.

Q. Would you prefer a junction at a safe place with the A. & V. or at an unsafe place with the A. & V.

A. I would want a safe place.

Q. And from the point of view of getting the timber out of there, do you know any difference between having a junction at Curran's Crossing and having a junction two and a half miles, or thereabouts east of Curran's Crossing?

[fol. 860] A. I can't see as there would be any difference in that.

Q. Is there any movement of freight going east from Leake County?

A. Movement of freight?

Q. Yes.

A. Yes, sir. This new road gets some coming back this way.

Q. As a matter of fact do not the lumber products and lumber move most out east?

A. West from this section.

Q. The lumber from this section is shipped most in what direction?

A. You are speaking of the state wide movement?

Q. Yes, state wide.

A. I suppose it is to the east.

Q. So, as a matter of fact, any lumber movement would come back this way?

A. Not necessarily. The I. C. carries a lot of lumber to Memphis. Memphis is a great lumber market.

Q. But you would say that the state wide movement was to the east in Mississippi?

A. I suppose it is, in the bigger sections of the state.

Q. Now——

A. A great deal of it goes to Memphis from Mississippi.

Q. If you wanted to move your hardwood to Memphis and if the J. E. run directly into Jackson you could move that lumber by the J. & E. and the I. C., on the two lines?

A. Yes, sir.

Q. If this road runs to Curran's Crossing you would have to move your lumber by the Jackson & Eastern to Curran's Crossing, by the [fol. 861] A. & V. to Jackson then by the I. C. to Memphis?

A. Yes, sir.

Q. So that from the point of view of moving your hardwood to Memphis which would you prefer, for the Jackson & Eastern to run directly into Jackson so you could move it on a two line haul or to run to Curran's Crossing so you would have a three line haul?

A. I suppose so, the two line haul.

Q. That is a fact?

A. Yes, sir.

Q. No doubt you had rather have a two line haul than a three line haul?

A. Yes, sir.

Q. So that, taking your agricultural products that you say you could ship to Jackson, would you prefer to have the J. & E. to run to Curran's Crossing or directly into Jackson?

A. I think the proposed junction at Curran's Crossing is my preference.

Q. But you had rather have the J. & E. run directly into Jackson?

A. Yes, sir, but beggars can't be choosers. We want to get as near as we can.

Q. According to your notion the only real difference in Curran's Crossing and the point of intersection two and a half miles west is that the extra two miles and a half, your objection is the extra two miles and a half?

A. Yes, sir, that is it.

Q. So you really rather have the Jackson & Eastern run directly [fol. 862] into Jackson?

A. Of course I had.

Q. You stated that you had had surveys for railroads on a number of occasions in that neighborhood?

A. Yes, sir.

Q. And you stated that they fell through?

A. They didn't build them, I guess something became of them. They went somewhere else.

Q. Do you know why?

A. No, sir, I do not.

Q. Isn't it a fact that they fell through because the people didn't see where they would be able to make any money out of it?

A. I don't think that is true, but I don't know.

Q. You were asked if there was any demand for a railroad to Pearson?

A. Yes, sir.

Q. There is no demand for a railroad to Curran's Crossing is there, the demand is for a railroad into Jackson?

A. Yes, sir, the demand is for a railroad to Jackson, not to Curran's Crossing.

Q. You have got a railroad from Canton to Pelahatchie?

A. No, sir, there is a log way, but it is not a common carrier.

Q. It is a log road?

A. It is a long way west from us, 20 miles.

Q. Have they got a bridge on the log road across Pearl River?

A. Yes.

Q. Where?

[fol. 863] A. At Ratcliffe's Ferry.

Q. That is for hauling lumber?

A. That is 20 miles west from us.

Redirect examination by Mr. Stone, for the defendant:

Q. Mr. Denson, you were just asked if there was a demand for a railroad to Curran's Crossing, or if the demand was not for a road going into Jackson?

A. Yes. If the railroad can't get to Jackson we would like to get as near as we can.

Q. Then, of course, the demand is for Curran's Crossing, as it is closer by?

A. We had rather get closer than that.

Q. Now, you were asked something about the flood territory. Now, suppose that territory lies between Pearson and Jackson. State to the Court whether or not that would be a suitable place for trucking stuff from Pearson over the flood territory to Jackson?

A. It would not.

Q. When you get to Curran's Crossing how close are you to Jackson? How much further than the M. & M. depot is from the center of Meridian?

A. Not much I guess.

Q. Do you know how far the M. & M. depot is from Meridian?

A. No, sir.

Q. You were asked about the movement of timbers, if it didn't move east. Would the lumber that moved east be hauled by the A. & V. or the J. & E.?

A. On the J. & E.

[fol. 864] Q. Mr. Denson, take Curran's Crossing, and a station established there by the J. & E. State whether or not that station would be—

Mr. Monroe: We object to him asking the witness about establishing a station.

Q. I believe you stated in your answer to Mr. Monroe that most of the lumber moved east. Would it move east over the J. & E.?

A. Yes.

Q. Then that lumber wouldn't go either to Curran's Crossing or Pearson?

A. It would move east over the J. & E.

Q. And any lumber moving east over the J. & E. wouldn't go to either Curran's Crossing or Pearson?

A. It would go out the other way.

Q. All that went east from the county wouldn't go on the west end of the railroad?

A. All that went east wouldn't.

Q. And it wouldn't be interested in this situation?

A. Of course not.

(Witness excused.)

[fol. 865] JOY DAVIS, having been called and duly sworn, testified as follows for and on behalf of the defendant, to-wit:

Direct examination by Stone, for the defendant:

Q. Mr. Davis, give your initials to the stenographer?

A. Joy Davis.

Q. Where do you live?

A. Lena.

Q. In what county?

A. Leake.

Q. What business are you engaged in?

A. Mercantile business.

Q. How many stores in Lena?

A. Six.

Q. What kind of business are you engaged in?

A. Just general merchandise.

Q. Groceries and dry goods?

A. Yes, sir.

Q. What is the extent of your business?

A. About the amount I do?

Q. Yes?

A. I do about \$60,000.00.

Q. A year?

A. Yes, sir.

Q. How long have you been in Lena?

A. I have been in business for myself since 1908.

Q. How long have you lived in Leake County?

A. All my life.

Q. What did you do prior to 1908?

[fol. 866] A. I worked in a store for Dr. Morris.

Q. In what town?

A. Lena.

Q. What kind of store?

A. General merchandise.

Q. And prior to the time you went in the mercantile business?

A. I worked on a farm.

Q. In what county?

A. Leake.

Q. You have spent practically all of your life in Leake County?

A. My entire life.

Q. How far will this railroad, the J. & E. run from Lena if built on the proposed line?

A. It will run through the town.

Q. Mr. Davis, this is a law suit over a junction at Curran's Crossing, and the A. & V. Railroad Company has proposed a junction not at Curran's Crossing, but at Pearson?

Mr. Monroe: We object, it is not at Pearson?

Q. Near Pearson, west of Pearson and near Pearson. You are familiar with the location of Pearson?

A. I have been there a great many times.

Q. State to the Court which one of these two points will best serve the people of Leake County?

Mr. Monroe: We object to the question, that is a question for the Court to decide.

The Court: I think he ought to state the facts before he gives an opinion.

[fol. 867] Q. Mr. Davis, what are you seeking over there anyhow?

A. We want to go into Jackson.

Q. You want to go to Jackson?

A. Yes, sir.

Q. Which of these points is closer to Jackson?

A. Curran's Crossing as I understand.

Q. Do you know where Curran's Crossing is?

A. Well, I know about where Mr. Neville throwed up a dump near a crossing of the railroad.

Q. That is how far from Jackson?

A. I judge about $\frac{3}{4}$ of a mile.

Q. How much further is that from Jackson than the M. & M. depot is from the center of Meridian?

A. I don't know, I don't think it is very much.

Q. What lies between this point and Jackson?

A. Pearl River.

Q. Take it for granted that Pearson is still two and a half or three miles, I mean the proposed point of junction near Pearson is two and a half or three miles——

Mr. Monroe: We object, it is only two or two and a half miles.

Q. That it is two and a half miles west of Jackson. Which is the preferable point to make a point of junction, at Curran's Crossing or the point near Pearson, and give your reason why?

Mr. Monroe: We object, he is calling for a conclusion on the very question that the Court is called upon to decide.

The Court: It seems to— that it would be better to prove which of the junction points is preferable, not what the people demand.

[fol. 868] They want to go into Jackson. I think it would be better to introduce testimony to show which of the points is best.

Mr. Monroe: We except to the ruling of the Court.

The Court: Go ahead with your question.

Q. What market for anything is there at Pearson?

A. None.

Q. What interest have you merchants at Lena to have a railroad run to Pearson, that would lead you to want to run a railroad to Pearson?

A. I wouldn't think there would be any, and it would be a longer haul to Jackson.

Q. If the railroad runs to Curran's Crossing state what accommodations that would be to the people of your community and you merchants in shipping your stuff?

A. I think it would make it cheaper for us, a shorter haul, it would be better for us and better for our customers.

Q. It would be delivered from the stores to Curran's Crossing on the J. & E.?

A. I think so, yes, sir.

By Mr. Monroe:

Q. Have you ever been on the road to Jackson?

A. Yes, sir.

Q. You have been over the road from Jackson to Pearson?

A. Yes, sir.

Q. Within what period?

A. Within the last few months.

By Mr. Stone:

Q. State whether or not the flood territory of Pearl River lies [fol. 869] between Pearson and Jackson?

A. Yes, sir, I think so.

Q. Then, if this J. & E. runs to Curran's Crossing would that give you access to the good road?

A. It is right on the concrete highway.

Q. And that concrete road runs where, westward?

A. Jackson.

Q. Across Pearl River?

A. Yes, sir.

Q. How far is it from your place south to a railroad?

A. 20 miles.

Q. How far is it north to a railroad?

A. North?

Q. Yes?

A. It is not due north, but it is 45 miles.

Q. How far is the next closest place, north or west?

A. West to Canton it is 30 miles, and east to the Jackson & Eastern about 11 miles.

Q. That is the same road that will run through Lena if it is continued?

A. Yes, sir.

Q. Well, is there any necessity for a road through there?

A. I think so.

Mr. Monroe: We object.

Q. Why so?

A. To get freight out and to railroad points, and there is a lot of timber in there.

[fol. 870] Q. How about your agricultural products?

A. A railroad is important. These things we can't move without one. At present we haul our stuff to Forest, but the roads are so bad in winter that it is almost impossible to pass over them.

Q. What do you mean by that?

A. That we can only get over the roads with wagons. And it is bad to go in a wagon right now.

Q. What railroads has the entire county of Leake, what railroad goes through there?

A. We haven't any except the J. & E. running to Walnut Grove.

Q. That is the extent of the Jackson & Eastern in Leake County?

A. Yes, sir.

Cross-examination by Mr. Monroe, for the complainant:

Q. Do you ship any produce to Jackson, Mr. Davis?

A. Yes, sir.

Q. You do?

A. Yes, sir, I ship produce to Jackson.

Q. What class of produce?

A. Chickens, eggs and cream.

Q. Are you doing that now?

A. Yes, sir.

Q. In what volume?

A. I have been shipping something like seven or eight thousand dollars worth a year, mostly cream.

Q. Do you ship anything east to Meridian?

A. Sometimes, but not very much.

Q. Do you buy any of your merchandise supplies in the east?

A. Some from Meridian.

[fol. 871] Q. Do you buy any in the eastern markets?

A. I buy from Meridian, Jackson and St. Louis, and other places, different points.

Q. How does the quantity you buy from Meridian compare with what you buy from Jackson?

A. About the same.

Q. A line of railroad from your territory to connection with the A. & V. at Curran's Crossing would mean that any movement from your town to Jackson would have to traverse two roads, the Jackson & Eastern and the A. & V.?

A. To where?

Q. If you had a connection between the J. & E. and the A. & V.

at Curran's Crossing, any shipment by railroad from your town to Jackson would have to use two lines of railroad?

A. It would, unless it was transferred by truck.

Q. Any shipment by railroad?

A. Yes, sir.

Q. Any shipment that went from Jackson, such as hardwood going to Memphis in order to get into Jackson would have to go first over the J. & E., then on by the A. & V.?

A. Yes, sir.

Q. From your point of view, for the main shipments of hardwood and lumber you would prefer to have a direct line of the Jackson & Eastern into Jackson, if the line of the J. & E. went to Curran's Crossing on a shipment going to Memphis you would have a three line haul, but if it went directly into Jackson there would only be a two line haul, the J. & E., and the I. C.?

[fol. 872] A. Yes, sir.

Q. As between these main shipments, you people would prefer a direct line of the J. & E. into Jackson?

A. I think it would be better.

Q. So from your point of view which do you prefer a line directly into Jackson or a line to Curran's Crossing?

A. I think it would be better to have a direct line into Jackson.

Q. Have you personally been to Curran's Crossing and stopped and examined the locality?

A. I have been along there in my car, but I didn't get out and inspect it.

Q. Have you ever been, or do you know where this suggested junction about two and a half miles east of Curran's Crossing is?

A. I know where Pearson is, but I don't know the exact location of this point.

Q. So you don't know anything at all about the physical condition of the junction point as proposed by the A. & V.?

A. Only as I noticed it on the plat.

Q. So you don't know anything about whether this proposed junction is on a curve or a straight line, the proposed junction of the A. & V.? Or whether it is on a fill or level ground, or near a highway crossing?

A. No, sir.

Q. Something was said about the flood area of Pearl River. Where is Curran's Crossing located relative to the flood area?

A. I don't know. I judge it to be a little higher, out further from the river.

[fol. 873] Q. It is right in the flood area is it not?

A. Yes, sir.

Q. If you had the alternative of having a line of road built by the J. & E. which was not in the flood area and a line of road built which was in the flood area, which would you prefer?

A. If it was up out of the high water I don't know as it would make any difference.

Q. Which would you prefer a place which was subject to high water or a place which was free from the high water?

A. It is owing to the distance. If you have got to go much further

away then I will say the flood area, if it don't have many floods during the year.

Q. From the point of view of the railroad movement, would you prefer a line that gave service the entire year?

A. The entire year, yes, sir.

Q. From the point of view of a passenger had you rather have a dangerous point or a safe point?

A. I had rather have a safe point of junction.

Q. Have you made any personal investigation, and if so, state whether this is a safe or an unsafe point of junction at Curran's Crossing?

A. No, sir.

Q. It is a fact that the lumber movement generally from the State of Mississippi is to the east, is it not?

A. I think so, yes, sir.

Q. And the lumber movement to the east from your territory would not come to this point west of Pearson or to Curran's Crossing [fol. 874] ing, but would go east by Meridian?

A. I don't know, I am not posted on that.

Q. If it was going east it wouldn't start west and then come back east?

A. No, I don't think so. It could go north on the I. C.

Q. Then it would go west to Jackson?

A. Yes.

Q. Jackson is how far west of you?

A. About 45 miles.

Q. Where is the last point to which the J. & E. is now constructed, locate the point?

A. Walnut Grove.

Q. And how far is that from Jackson?

A. You mean of their line?

Q. Yes?

A. I think it is about 55 or 60 miles.

Q. It is further than that on the projected line?

A. I suppose it is about 55 miles from Walnut Grove to Jackson.

Q. But on the line projected by the railroad it would be further than that?

A. Yes, sir.

Q. There is no market, of course, at Curran's Crossing, is there, Mr. Davis?

A. No, sir, there was not the last time I was there.

Q. There is no demand by you for a railroad to Curran's Crossing only is there?

A. No, sir.

[fol. 875] Q. Do you know just how far the proposed junction as suggested by the A. & V. is to the east of Curran's Crossing?

A. I don't know, I think it is about two miles, or two miles and a half, I don't know definitely.

Redirect examination by Mr. Stone:

Q. Mr. Davis, I understood you to say just now that there was no demand on your part for a railroad to Curran's Crossing?

A. I said right there, just a line to that point without getting to Jackson.

Q. As between Jackson and Pearson, I mean Curran's Crossing and Pearson which is the preferable point?

A. Curran's Crossing would be better, it is closer to Jackson.

Q. Take the stuff from your store from your town to Jackson, with depot facilities at Curran's Crossing built there by the J. & E. how could it be handled from there into Jackson?

A. By truck very easily.

Q. Take the goods you buy to be shipped from Jackson to your place of business, how could that be handled?

A. It could be sent over to the Jackson & Eastern by trucks.

Q. Then you have how many railroad hauls?

A. Only one.

Q. And that is the J. & E.?

A. Yes.

Q. How do you get your goods now?

A. By having them shipped to Forrest.

Q. Shipped on the A. & V.?

A. Yes, sir.

Q. And then how are they delivered to you at Lena?

[fol. 876] A. By wagons and trucks.

Q. At this season of the year how do you get your shipments from Forrest?

A. Wagons, that is the only way.

Q. What about the expense of the delivery?

A. It is pretty expensive, it really cost about fifty cents a hundred.

Q. How do you ship your stuff to Jackson?

A. By wagons and trucks to Forrest where it is shipped over the A. & V.

Q. What about the expense of delivering it to Forrest?

A. It is quite expensive.

Q. If a Railroad runs to Curran's Crossing and a station is established there, then how could you handle your produce shipped to Jackson?

A. Send it to the station and have a man from Jackson come over there and get it, that would be much better than hauling it to Forrest.

Q. Then, as between Pearson and Curran's Crossing which one would serve your community better?

A. I think Curran's Crossing is better.

Q. Then, if you shipped stuff in there to Curran's Crossing, how could it get into Jackson?

A. By truck.

Q. When stuff is shipped here over the M. & M. how is — brought up to the center of Meridian?

A. It is brought up by truck.

[fol. 877] Q. Both by the same method?

A. Yes, sir. That is the way it is done from Forest, and if the road went to Pearson it would be the same way.

Q. From Pearson it would be more expensive, to go two and a half miles than it would be to go three-quarters of a mile?

A. It would be that much more expensive.

Q. Suppose that these flood waters that they are talking about lies between this proposed junction, how then would they get from there to Jackson?

A. They would have to leave it or pipe it.

Recross-examination by Mr. Monroe, for the complainant:

Q. How far is it from Forest to Lena?

A. About 20 miles.

Q. If you have a haul from Forest to Lena a distance of 20 miles, what is the unsurmountable obstacles in hauling beyond Curran's Crossing to the junction as proposed by the A. & V.?

A. We could do that, it would be better than the 20 mile haul.

Q. It would be two and a half or two and a fourths miles better?

A. Yes, sir.

Q. In your comparison, from your point of view, the junction at Curran's Crossing and the Junction at Pearson, you don't proceed on the theory that the two lines, two junctions, would be equally free from danger?

A. I wouldn't think there was much difference.

Q. You stated awhile ago that you knew nothing about the danger at either point?

A. Nothing but the high water.

[fol. 878] Q. But you don't consider that the danger at either junction is about the same?

A. I don't think there is much difference.

Q. And you have given your testimony predicated on the theory that there is not much difference?

A. I wouldn't think there was much difference.

Q. And your testimony is predicated on that?

A. I don't know sir, that it is.

Q. Do you think there would much more danger at Curran's Crossing than at the proposed junction point near Pearson?

A. No, sir, I don't think so, I don't know.

Q. And it was with that thought in your mind that you give this testimony?

A. Yes, sir, I don't think there is much difference.

Q. If it was demonstrated to your mind that it was much more dangerous at Curran's Crossing, would your testimony be the same?

A. I would risk the danger to get closer.

Q. Much more dangerous?

A. Yes, sir, I would.

Q. Mr. Davis, if you were a passenger on a train would you take the safe way which was two or two and a half miles further, or would you take the short and dangerous way?

A. Just judging from the past, there has never been an accident, and I would risk it.

Q. You stated that there had never been an accident there?

A. Not that I know of.

Q. You are quite right, there has never been an accident on account of this junction, the junction has not been built?

[fol. 879] A. I don't think there has been an accident between Pearson and Jackson, that I know of.

Q. You never heard of an accident at Curran's Crossing?

A. No, sir.

Q. You were just not informed on the subject?

A. I guess not.

Q. There could not have been an accident as a result of this junction when there is no junction there?

A. But there is a railroad track there, I don't think it would be any more dangerous than the road we go over to Forest.

Q. Have you ever walked the proposed line of the J. & E. from Lucknow or Liberty Church to Curran's Crossing?

A. No, sir.

Q. Have you ever walked the J. & E. from Lucknow to the A. & V. proposed junction?

A. No.

Q. You don't know the relative merits of the two roads?

A. No sir.

Q. Did you ever hear of the Sessums accident at Curran's Crossing?

A. Yes, sir.

Q. Then you overlooked that awhile ago?

A. I said a railroad accident.

Q. And what kind of accident was the Sessums accident?

A. A train run over a car and killed them.

Q. The occupants of an automobile?

A. Yes sir.

(Witness excused.)

[fol. 880] B. GARRETT, having been called and duly sworn, testified as follows, to-wit:

Direct examination by Mr. Stone, for the defendant:

Q. Give your initials to the stenographer?

A. B. Garrett.

Q. Where do you live?

A. Lena.

Q. In Leake County?

A. Yes, sir.

Q. How long have you lived there?

A. 28 years.

Q. How long have you lived in Leake County?

A. 28 years.

Q. What business are you engaged in?

A. Milling and farming.

Q. What kind of milling?

A. Saw mill, ginning cotton and grinding.

Q. How long have you been engaged in that business?

A. 28 years.

Q. How do you ship the products of your mill?

A. I don't ship any, just saw for the local trade. I couldn't ship for I have no way to ship.

Q. If you were to ship how would you reach the railroad?

A. Why, it would be by hauling with a truck or wagon.

Q. To what point?

A. Forest.

Q. How far is it?

[fol. 881] A. 20 miles.

Q. What is the condition of the road now?

A. It is pretty bad now.

Q. Where do you buy your goods from?

A. Well, I don't buy much goods, nothing shipped but bagging and ties, or something like that. I am not in the mercantile business.

Q. Where do you get these?

A. From Jackson & Vicksburg.

Q. To what point are they delivered?

A. Forest.

Q. Are you familiar with the Leake County lands?

A. Well, to some extent I am, yes, sir.

Q. What is the character of the lands?

A. We have pretty good farming lands. In our community we have what I consider extra farming lands.

Q. Do you know the lands through which the J. & E. runs?

A. Yes, sir.

Q. The proposed route?

A. Yes, sir.

Q. What is the character of the country through which the proposed line runs?

A. It is in good farming sections.

Q. What about the timber?

A. There is lots of timber.

Q. What kind of timber?

A. Pine most of it, hardwood in some places, in the swamps.

Q. State to His Honor whether or not your timber can be disposed of to advantage without a railroad?

[fol. 882] A. I can't do anything at it. I have a mill and I am not doing anything with it but sawing for the local trade.

Q. Why?

A. I have no market.

Q. No railroad to a market?

A. No.

Q. Suppose that the J. & E. railroad was extended to Curran's Crossing and a junction was made with the A. & V., and suppose a

depot is built by the J. & E. at Curran's Crossing and a freight house state to His Honor whether or not that would furnish facilities for the shipment of your stuff?

A. It would.

Q. Do you know where Curran's Crossing is?

A. Yes, sir, I have seen the dump that has been put up there.

Q. Across the River east of Jackson?

A. Yes, sir.

Q. Do you know where Pearson is?

A. I just know where it is on the railroad, I don't know anything about the place.

Q. Do you know where the proposed junction, as proposed by the A. & V. is?

A. I just know where Pearson is.

Q. Well, it is west of Pearson and about two and a half miles east of Curran's Crossing. Now state to the Court whether or not, or state which one of these points would put you closest to the market, and give you reason why?

Mr. Monroe: We object.

[fol. 883] The Court: Why.

Mr. Monroe: This witness has testified that he doesn't know where the A. & V. proposed junction is, and certainly he can't testify as to the desirability of it.

Q. Do you know where Pearson is?

A. Yes, sir. I have never stopped there, but I have been by there

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Take it for granted that the junction proposed by the A. & V. is near Pearson, a little west, and about two and a half miles east of Curran's Crossing, which one of these points would best serve your community as a junction with the A. & V. for handling your stuff?

Mr. Monroe: We object for the same reason.

Q. Mr. Garrett, state to the Court what conveniences you would have, if any, at Curran's Crossing for shipping your stuff?

A. It would be nearer Jackson, and there on the concrete road.

Q. At this other point two and a half miles further east from Jackson, near Pearson, what conveniences would you have there?

Mr. Monroe: We object, unless he shows that he knows something about it.

The Court: I think the objection is well taken.

Q. What interest would you have in going to a point a little to the west of Pearson?

A. I had much rather have the other place, but we had rather have it than none at all.

Q. At what point?

[fol. 884] A. I had rather have it at Pearson than not have any road at all.

Q. But as to Pearson and Curran's Crossing?

A. I had rather have it next to the River.

Q. Why?

A. In order to get into Jackson on the concrete road.

Q. If your goods were put off there at the J. & E. depot, if they built one there, how could they be handled through into Jackson?

A. It would have to be done by trucks or wagons.

Q. How are goods handled from the M. & M. depot up to the merchants in Meridian?

A. The same way I reckon.

Q. How much further is it?

A. I don't know.

Q. Do you know how far the proposed junction at Curran's Crossing is from Jackson?

A. I don't know exactly how far, but it maybe a mile to the depot.

Q. I don't mean to the depot, across to Jackson?

A. I don't suppose it is over a half mile.

Q. And how much further is that than the M. & M. depot?

A. I don't know how far it is.

Q. You buy stuff from Jackson?

A. Yes, sir, some.

Q. If there is a depot established at Curran's Crossing and you bought your goods in Jackson, how could they be handled?

A. It could be sent to the depot and shipped on the J. & E.

Q. Stuff shipped from any depot, state whether or not it has to be delivered to the depot in trucks?

[fol. 885] A. Yes, sir, it has to be delivered to the depot.

Q. Suppose that Curran's Crossing is there next to the River on the side next to Jackson, on the west side of the flood district, and suppose the proposed junction near Pearson is on the other side of the flood district of Pearl River, what difference would that make?

A. I don't know.

Q. What difference would it make as to the hauling?

Mr. Monroe: We submit that it is leading.

The Court: I sustain the objection as to it being leading.

A. It would be better than hauling through the flooded district.

Q. From Curran's Crossing?

A. Yes, sir.

Cross-examination by Mr. Monroe, for the defendant:

Q. Does lumber move in car load lots or less than car loads?

A. Mostly car loads.

Q. So if you shipped a car to Jackson you would want it to go over into Jackson?

A. Yes.

Q. You wouldn't want to ship it part of the way and unload and haul it the rest of the way by truck?

A. No, sir.

Q. This handling cost, of loading and unloading and hauling by truck would be prohibitive?

A. It looks like it.

Q. If you shipped lumber from your saw mill to Jackson and the Junction point was Curran's Crossing, the lumber would move in car load lots over the J. & E. and then on the A. & V. to Jackson?

[fol. 886] A. I don't know, if the A. & V. would let them I suppose so.

Q. Now, if the junction was to the west of Pearson and two and a half miles east of Curran's Crossing, in that case your lumber would move over the J. & E. down to the junction and then west over the A. & V.?

A. I think so.

Q. Do you know of any substantial difference in these movements?

A. Just a little difference in distance.

Q. And that is the whole thing?

A. But if it had to be trucked there would be considerable difference.

Q. But you wouldn't handle your lumber in truck loads, but car loads?

A. Mostly car loads, yes, sir.

Q. Now, you said that your supplies were mostly bagging and ties?

A. The most I have shipped.

Q. And you stated that you got some of that from Jackson and some from Vicksburg?

A. Yes, sir.

Q. What proportion do you get from Vicksburg?

A. Well for the last two or three years I have been getting it altogether from E. B. Williams, a baggageman there.

Q. When you get your bagging and ties out of Vicksburg, it comes over the A. & V. from Vicksburg all the way east?

A. To Forest.

Q. Then if it was loaded on the A. & V. at Vicksburg it would make no substantial difference to you where it was laid off the A. & V. at Curran's Crossing or came on two and a half miles further?

[fol. 887] A. It wouldn't make any difference to me.

Q. It would make no difference whether the junction was at the Crossing or whether it was two and a half miles further east?

A. Not if the freight rates were the same.

Q. You don't know anything about the freight rates, what they would be?

A. No, sir.

Q. On the other hand, if the J. & E. is so constructed as to be subject to floods if it goes to Curran's Crossing, but if it was constructed further east, the junction would be out of the flooded district, beyond the interruption of floods, wouldn't it be more desirable from your point of view to have it all the year around free from floods?

A. I don't know anything about the flood district. I don't know whether the water goes up there or not.

Q. Suppose that the J. & E. comes to Curran's Crossing and both it and the A. & V. be subject to the flood waters where the waters cross the A. & V. Wouldn't it be more desirable to have a flood free line?

A. I think so, if this is a flooded line.

Q. You would object to having the flooded line?

A. Yes, sir.

Q. And your only misgiving is you don't know whether this is a flooded line or not?

A. I don't know.

Q. Suppose that I should show you that it was a line subject to floods?

[fol. 888] A. I would say the line free from floods.

Q. Suppose I showed you that the Curran's Crossing connection is a dangerous connection, whereas the other connection, this one two and a half miles east, was safe. Would you prefer to have a safe connection rather than a dangerous one?

A. It looks like it.

By Mr. Stone:

Q. Mr. Garrett, you stated while ago that produce could be trucked from Curran's Crossing into Jackson. I will ask you whether or not it is true that produce that is shipped into any depot whether it is at Curran's Crossing or anywhere else, it has to be trucked out to the merchants?

A. It would have to be trucked.

Q. How would they get it from the M. & M. depot?

A. Trucked in, it would have to be moved someway.

Q. What difference would it make whether it was trucked from Curran's Crossing or some other depot?

A. There would be no difference, only it would be further to truck.

Q. Now, then, do you know the distance from Curran's Crossing over into Jackson?

A. No, sir, I think it is about four miles.

Q. From Curran's Crossing?

A. Not more than a half a mile.

Q. Mr. Monroe asked you about the flood district?

A. I don't know anything about that.

Q. He asked you about the dangers, do you know anything about that.

A. No, sir.

(Witness excused.)

[fol. 889] S. A. NEVILLE, having been recalled, his direct examination was continued.

Direct examination by Mr. Stone, for the defendant:

A. Mr. Neville, I want to ask you further about the relative merits of this junction at Curran's Crossing and the proposed junction as

proposed by the A. & V. near Pearson. I asked you yesterday what economic demand there was for a railroad at Pearson.

Mr. Monroe: I don't think that has any bearing on the question at all, and object to it as being incompetent, irrelevant and immaterial, and calling for the opinion of a man not qualified as an expert.

Q. How long have you been in the railroad business?

A. 12 years.

Q. What has been your work in the railroad business?

A. Projecting, locating the lines, financing the proposition, obtaining the necessary authority for building and locating the lines in connection with the engineers and approving the location, constructing the roads and operating them.

Q. What experience have you had in securing junction points?

A. I have had considerable experience, and it has carried me many times to Washington to go before the Interstate Commerce Commission, and every phase of the transportation Act touching upon railroad situations has been handled by me. I made 12 or 15 trips to Washington.

Q. How many junction points have you established in your experience as a railroad man?

A. I think I have established four.

[fol. 890] Q. At what points?

A. The M. & M. at Meridian with the A. & V., and with the G. M. & N. on the east at Union, and the G. M. & N. on the west at Union.

Mr. Monroe:

Q. The last two were by consent?

A. None of them were by consent.

Q. Was any objection made by the G. M. & N.?

A. Yes, sir.

By Mr. Stone:

Q. Since Mr. Monroe raised the question, about whether any of these junctions were made by consent, go on and state to His Honor how you established all of them?

A. I have had active opposition with every carrier since I started in the railroad business.

Q. What was the first one, or with what road as you came out of Meridian?

A. The junction with the A. & V.

Mr. Monroe: We object to that as being incompetent, irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Where was the first point?

A. With the A. & V. at Meridian.

Q. Where was the next point?

A. With the M. & O.

[fol. 891] Q. At what point?

A. At Meridian.

Q. You say there was opposition, what kind of opposition?

Mr. Monroe: We object to this as being entirely incompetent. If they continue this they will bring in a lot of other litigation.

The Court: I will admit the question, but I will not allow them to bring in any other litigation.

Mr. Monroe: We except to the ruling of the Court.

Q. What kind of opposition was made?

A. They didn't want me to make a physical connection.

Q. How did they oppose it?

A. Got out an injunction.

Q. How did you go about it?

Mr. Monroe: We renew our objections, and further object because we don't think it has any bearing on this case.

Q. How did you get across?

A. By an overhead construction.

Q. Over what railroads?

A. The A. & V., the N. O. & N. E. and the M. & O.

Q. That is the overhead construction in Meridian?

A. Yes, sir.

Q. When you got to Union with the G. M. & N. you say there was opposition?

A. There was.

Q. How did you get your connection there?

A. I applied to the Mississippi Railroad Commission in order to force a connection.

[fol. 892] Mr. Monroe: We object to any testimony about an application to the Mississippi Railroad Commission on the ground that the document itself is the best evidence, and object further on the ground that it is incompetent, irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. To whom did you apply?

A. To the Mississippi Railroad Commission for an order to force a junction.

Q. Did that apply to both junction — at Union, or only one?

A. One.

Q. How about the other one?

A. That was obtained by agreement.

Q. By agreement?

A. Yes.

Q. Mr. Neville, you stated that your experience had brought you in touch with the Interstate Commerce Commission touching these matters?

A. It has.

Q. How many trips did you make to Washington to see the Interstate Commerce Commission with respect to the location of your road to Jackson?

A. Either 11 or 12 trips.

Q. Covering what period of time?

A. Over a year.

Q. I am not asking you the contents of any paper, I am asking you to state whether or not you got permission to build?

[fol. 893] Mr. Monroe: We object, the decision of the Commission is the best evidence.

The Court: I think it is. Whether Mr. Neville got permission to build to Curran's Crossing should be proven by a certified copy of the proceedings. I sustain the objection.

Mr. Monroe: I am willing for you to use the documents you have until you get certified copies.

Q. Mr. Neville, I ask you about a paper which is marked Exhibit One to your testimony. How did you get this paper?

A. Through the United States mail in an envelope of the Interstate Commerce Commission.

Q. Envelope of the Interstate Commerce Commission, what do you mean?

A. From Washington.

Q. What did the envelope have on it?

A. It had no stamp, it was just an official envelope from the Commission.

Q. And you got it through the United States mail?

A. Yes, sir.

Q. State to the Court whether or not you have written any letter about it, I am not asking the contents of the letter, had you written any letter requesting in such to the Commission?

A. That was the result of my application.

Q. Mr. Neville, in asking you about your experience I will ask you whether or not you are a member of the short line railroad association, I did ask you that and you stated that you were?

A. Yes, sir.

[fol. 894] Q. Mr. Neville, with that experience back of you—

A. I will say further more that in addition to that that I have negotiated the traffic arrangements with my connecting carriers?

Q. How many connecting carriers?

A. All of them at Meridian, and the Union Traffic Division.

Q. I will ask you to state whether or not your experience enables you to judge as to whether a particular location was financially feasible as a point of connection between two roads?

Mr. Monroe: We object. That is not the question.

The Court: I think he can answer that from his experience, and I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. The point I am asking is, from your experience could you state

whether there would be any economic demand for a railroad to any given point?

Mr. Monroe: And he has not qualified as an expert.

Q. What opportunities have you had to know, Mr. Neville?

A. The success of the financial arrangement is dependent on the proper location, and unless the particular location is justified financial failure is certain.

Mr. Monroe: We move to strike the answer from the record.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. At your junction at Union did you have the same problems there, your junction with the G. M. & N.?

Mr. Monroe: We object to the leading question.

[fol. 895] The Court: Don't lead the witness.

A. Which one?

Q. At Union?

A. The J. & E. or the M. & M.?

Q. Either one?

A. Yes, sir, I did.

Q. Take the proposed junction at Jackson, did that proposition arise, and did you have to investigate that proposition?

A. I did.

Q. Take the proposed junction as proposed by the A. & V. at Pearson. I want you to state to the Court what economic demand there is for a railroad for the J. & E. to terminate, making a junction at or near Pearson?

Mr. Monroe: We object, he has certainly not qualified to give an opinion on that question.

Q. I will qualify him further. I will ask you to state in running the M. & M. into Meridian whether there arose a similar situation with respect to making a junction at another point, and if so where?

Mr. Monroe: We object to that as being irrelevant.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. When I sought the connection the A. & V. said that I could go further west out in Okatibbee Swamp somewhere.

Q. Was there or not a suggestion made about connecting at Meehan?

A. Yes, sir, there was a log road running out from Meehan, belonging to the Cotton States Lumber Company, and it was suggested [fol. 896] that I buy that and make a connection at Meehan.

Q. Why didn't you locate at Meehan?

Mr. Monroe: We object.

The Court: I sustain the objection.

Q. Mr. Neville, I want you to state to the Court what economic demand there is, if any, for your road to run to Pearson, near Pearson, at the point proposed by the A. & V. Railroad?

Mr. Monroe: I object on the ground that that is a question Your Honor to decide.

Q. Rather than for the road to run to Pearson than for it to run to Curran's Crossing?

Mr. Monroe: And we further object as this is calling for the opinion of a witness who is not an expert.

The Court: But I understand that that is their theory of the case, whether or not there is any demand for a railroad at this point. I don't know whether that makes any difference, but I will allow you to go in, overrule the objection.

Mr. Monroe: We except to the ruling of the Court. And it is understood that I am objecting to this entire line of testimony, with the same ruling by the Court, and with our exceptions to his ruling.

Mr. Stone: We are willing for the record to show that you object to every question we ask and every answer given, regardless of whether it is.

Q. Go ahead, Mr. Neville?

A. The proposition of building a railroad to Pearson, with knowledge of the Transportation Act, the demand for it from [fol. 897] financial standpoint would be so absurd that I would not undertake for a minute thinking of presenting such a thing to anybody with money with a view of expecting them to put money in the project, and if I had the money myself with which to build it I wouldn't put it in such an absurd and ridiculous proposition. I was forced to accept this place as a point of connection I would abandon the project.

Mr. Monroe: We move to strike out the answer of the witness.

Mr. Stone: I am willing for the record to show that you make motion to strike out every answer given. I want to save time and get along.

Q. Mr. Neville, take Pearson as a point of junction, the point near Pearson, the point as proposed by the A. & V. when the timber was cut along the right of way, what demand would there be for a continuation of the operations of that road?

A. There wouldn't be many years before there would be a petition before the Commission to abandon the line, the risk would not be profitable. Just as soon as the forests disappeared there it would cease to be profitable. What a railroad has to do is to depend on the territory for its revenue, short line railroads, and when the revenue disappears if it has no link with any main line railroad it necessarily ceases to be profitable. On this lumber going to the junction at Pearson the division the A. & V. would allow me would be so small on this that I would have to apply to the Interstate Commerce Commission—

Mr. Monroe: We object to him undertaking to state what division the A. & V. would allow him. He has had no conversation with [fol. 898] them, and therefore knows nothing about it.

A. I think I do.

Mr. Monroe: He is undertaking to testify what division the A. & V. would make him on this lumber.

The Court: Where is that.

By Mr. Monroe:

Q. You think you do?

A. I do, I had a conversation with them about it.

Q. At which junction?

A. The junction through Curran's Crossing.

Q. With whom and where?

A. With the General Freight Agent and Mr. Jones.

Q. When?

A. I can- recall, but it was in their office.

Q. You mean to say that a division of the rates were discussed?

A. I certainly do.

Q. Well, I will put Mr. Jones on the stand to prove that isn't so.

A. You can't prove it isn't so.

Mr. Neville: We object to him stating to the witness that he is not telling the truth.

The Court: I can't have anything like this.

By Mr. Stone:

Q. Based upon the ordinary division of tariff rates, state whether your road in making a junction at Pearson could successfully operate on the usual rates on lumber?

A. I would be compelled to apply to the Interstate Commerce Commission for authority, I would be compelled to take arbitrary [fol. 899] rates on my line which would tax the holders of the timber that much. Whereas if we should go to Curran's Crossing it would be handled in a switching movement.

Mr. Monroe: We move to strike that out.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Are switching charges greater or less than the division of the rates?

A. That is not taxed on the shipper of the lumber.

Q. If you had to increase that rate who would bear the burden?

A. The people owning the lumber along my railroad.

Q. Now, going back to the proposition that you testified to about after the timber was removed the railroad would have to be abandoned. Why would you have to abandon the road?

A. Simply because the road could not be utilized in the scheme of consolidation of the Interstate Commerce Commission and the

Act of Congress at this time. It is not in line with the scheme of connection of railroads, if this junction was made at Pearson I could not perfect any arrangements with any road running north or south, couldn't join.

Q. You couldn't join with any other road?

A. I would absolutely be at the mercy of the A. & V. as to whatever they wanted to do in the matter unless I was given relief by the Interstate Commerce Commission.

Q. In addition to that if the junction was made at Pearson how would they get from Pearson to Jackson?

A. The only way to complete my line would be to duplicate the [fol. 900] A. & V. road, and there is no traffic between Pearson and Jackson that would justify a duplication of the expense from Pearson.

Q. You mean run a parallel line?

A. Yes, sir, duplicate operations.

Q. How about crossing the A. & V. and going around Jackson?

A. Then, that would be considerably more mileage sustained.

Q. Is that feasible?

A. It is not feasible. The earnings would not justify it. The earnings of the line are on a six per cent earning basis—

Mr. Monroe: We object on the ground that the earnings are given for a period of time, given for the construction.

Q. After that period of time is over, state to the Court what effect the cost of construction and maintenance is to your six per cent earnings?

A. It would be absorbed, and the whole proposition would be unprofitable and impractical.

Q. From your experience as a railroad man, in constructing railroads and locating them and operating them, state to the Court whether or not in your judgment if you were required to run a line of railroad to Pearson to make a junction you could operate that road at any profit?

Mr. Monroe: We object.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. It could be for a few years but not ultimately and permanently.

Q. In locating your line of road, did you or not take into consideration the convenience and your ability to serve the people along your line of railroad?

A. I just as near as I could divided the distance between the A. & V. and the I. C. so as not to encroach on either line if they were serving that territory better. It was my motive to locate a line so that it would not parallel any portion of their lines and yet give these people in this section a road in equal distances as near as I could with a view of the physical difficulties, and locate the line so that it

would bring the greatest number of people within a distance of railroad transportation.

Q. State to the Court which point, whether Curran's Crossing or the proposed point made by the A. & V. you can best serve the public along the line of the proposed road?

Mr. Monroe: We object to this as being entirely improper, and it is an attempt to get into this record the conclusion that this Court is called on to decide in this case.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. The line as I located at present intersects the A. & V. at Curran's Crossing is such a line that will both now and in the future give that section of country permanent and satisfactory rail transportation and service.

Mr. Monroe: I move to strike the answer out.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

Q. Mr. Neville, now going back to the point that has been suggested, that is crossing the River at a point north of Curran's Crossing [fol. 902] ing and go into Jackson north of the Old Capitol. I asked you about that yesterday, and you said the cost of the bridge and terminal facilities in that vicinity was prohibitive. I want to ask you what additional disadvantage that would have from a financial standpoint?

A. In the first place an act of Congress would have to be obtained.

Q. Why?

A. Because that is a navigable stream under the control of the War Department, and an act of Congress would have to be obtained.

Mr. Monroe: That is a question of law, and we object to him undertaking to give his opinion on the law, and we move to strike it from the record.

Mr. Stone: I am willing for it to go out.

Mr. Monroe: I ask that it be physically stricken from the record.

The Court: I sustain the objection.

By Mr. Stone:

Q. Is Pearl River at that point navigable?

A. It is.

Q. Mr. Neville, you say there is another disadvantage, what is that?

A. There is a right of way over there, but there is no railroad across the River on the immediate west of Pearl River, and I would have to traverse the streets of Jackson in order to make a connection, and right now in the City of Jackson the railroads are confronted with a proposition relative to crossing the streets, and the different railroads have agreed to spend a million dollars to meet the demands of Jackson with reference to the operation of trains over their streets,

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and it would be an overwhelming proposition for a short line railroad to undertake such a thing.

Q. You mean the expense of acquiring your terminals and connections?

[fol. 903] A. Yes, sir.

Q. Mr. Neville, I want you to state to the Court whether or not those objections you have named are prohibitive, or whether or not they can be met by short line railroads?

A. They cannot. I have studied the proposition thoroughly from every point of view, and I wouldn't undertake to finance such a proposition, and I doubt that the Interstate Commerce Commission would permit it.

Mr. Monroe: We move to strike from the record his thought as to what the Interstate Commerce Commission would do.

The Court: I sustain the motion.

Q. I will ask you this question. If you had to spend the amount of money that would be required to cross this River, build your terminal facilities and construct your connections, state whether your short line railroad could pay on the six per cent basis?

A. It could not.

Mr. Monroe: I make the same objections.

Q. What experience have you had in that line?

A. I have had 12 years of operating experience.

Q. Have you had any experience in building a road where you had extra overhead expense at a terminal?

A. I did, at Meridian.

Q. What road?

A. Three roads.

Q. What was your road?

A. The Meridian & Memphis.

[fol. 904] Q. What about the Meridian & Memphis as a paying proposition on that overhead charge?

Mr. Monroe: I object, it has nothing to do with this question.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

Q. State to His Honor with that overhead charge whether or not the Meridian & Memphis could have operated?

Mr. Monroe: We make the same objection.

A. It could not. I was forced to sell the property on account of the terminal in the city of Meridian.

Q. With that expense and with your other expense in laying out a railroad and constructing it, state whether or not a short line railroad like the J. & E. could stand an overhead charge such as you indicated if you went to a point north of Curran's Crossing as suggested by the A. & V., could stand the overhead charge and operate at a profit?

A. It could not.

Mr. Monroe: We make the same objection and the same motion to strike out.

Q. What would be the ultimate result?

A. I couldn't finance it to begin with.

Q. If you couldn't finance it could you build it?

A. I would have to abandon the scheme.

Q. Mr. Neville, a good deal has been said about your line running into Jackson. I want you to explain to His Honor, taking a road like this, whether it has to be built by degrees or whether it can all be built at once?

Mr. Monroe: We object to that as being irrelevant and immaterial. [fol. 905] The Court: That would depend on the financial ability of the promoters. I reckon that is a question for the Court to decide. I will sustain the objection.

Mr. Stone: We except to the ruling of the Court.

Q. Mr. Neville, certain letters were read into the record by Mr. Jones, President of the A. & V. touching negotiations with you relative to the use of the A. & V. line and terminals from Curran's Crossing on into Jackson. State to the Court whether or not you had certain conferences with the A. & V. authorities touching that question?

A. I did and I applied to the Interstate Commerce Commission.

Q. State to the Court what all you did to get into Jackson over the A. & V.'s line and the use of its terminals?

A. The people of Jackson were anxious for this road——

Mr. Monroe: We object to what the people wanted.

Q. Tell what you did?

A. I wanted to carry my road into Jackson. The Transportation Act provides that in the joint use of terminals——

Mr. Monroe: We object to that.

The Court: I sustain the objection.

A. I attempted to go into Jackson by the joint use of the A. & V. tracks from this point of Junction on in.

Mr. Monroe: We object, his answer says that he don't want to do any such thing. We can cite you to the paragraph of the answer.

Q. Prior to the time you filed your eminent domain proceedings?

Mr. Monroe: We object.

Q. Let me ask you in this way. State what effort, if any, you made to go into Jackson by the use of the A. & V. tracks from [fol. 906] Curran's Crossing, prior to the time you filed your eminent domain proceedings?

Mr. Monroe: We object to him establishing a defense that he wants to go into Jackson on the A. & V. tracks, for the reason in his answer in this case he specifically states to the contrary, which is as

follows. This respondent does not know whether the complainant was advised that it would be the purpose of this respondent in beginning the said eminent domain proceedings was not only to effect a junction of its road with the railroad of the complainant, the Alabama & Vicksburg Railway, but that this respondent also designs and proposes to run its trains, locomotives and cars over the main line of the Alabama & Vicksburg Railway Company and over its bridge across Pearl River and to use the station facilities of the said Alabama & Vicksburg Railway Company, its side tracks, switches, et cetera, in the City of Jackson, Mississippi, for its own purposes, but this respondent states the fact to be, that it has no such purpose, and further in paragraph 11 is. This respondent states and shows that the fears expressed by the complainant in their bill as to the danger of said junction is wholly imaginary and have no foundation whatever. In fact said fears are as baseless as the allegation contained in said bill touching the purpose of this respondent to use the main line, bridge and terminal facilities of the Alabama & Vicksburg Railway Company.

We submit that after they have made these solemn judicial declarations in this answer which still stands, that the defense established now that it is going to use the bridge and main line of the A. & V. is objectionable.

[fol. 907] The Court: I don't see Mr. Monroe, where anything that took place between Mr. Neville and the officers of this road would have anything to do with it, or would be establishing a line of defense. I will overrule your objection.

Mr. Monroe: I except to the ruling of the Court, and I ask that the same objection apply without repetition to all of this line of testimony, with the understanding that the Court makes the same ruling, and with my exceptions.

By Mr. Stone:

Q. Read the question to him, stenographer?

Q. State what efforts, if any, you made to go into Jackson by the use of the A. & V. tracks from Curran's Crossing, prior to the time you filed your eminent domain proceedings?

A. I applied to the Interstate Commerce Commission.

Q. Who did you apply to first?

A. I applied to the officials of the A. & V.

Q. State what success you had with them?

Mr. Monroe: We ask if the statement was made in writing or was a verbal statement. If it was in writing we ask that the writing be produced.

Q. Was it in writing?

A. Both.

Q. Mr. Neville, letters have already been introduced by the witness, Mr. Jones, touching that conference, copied in the record, at a former hearing of this case. You heard those letters when they were read?

A. Yes, sir.

Q. I will ask you whether or not there was any agreement between [fol. 908] you all whereby the consent, you were by consent to use these facilities?

A. There never was.

Q. After you failed on that, then what did you do?

Mr. Monroe: Will you have those letters identified to which you have referred?

Mr. Stone: I hav-n't the volume here, they are the letters that were introduced.

Mr. Monroe: Was it the letter dated September 30, 1921?

Mr. Stone: It was the letters introduced bearing upon this question.

Q. Now, Mr. Neville, after you failed there, then what did you do?

Mr. Monroe: I ask that the witness identify the letters he refers to.

The Court: But they have already been introduced in the testimony by the complainant in this case.

Mr. Monroe: But which are they?

Mr. Stone: In addition to the letter I referred to, I also refer to letter of October 6, 1921, to Mr. L. A. Jones, President & General Manager of the A. & V. Railroad, Exhibit "U" to Mr. Jones' testimony, also, Exhibit "T," a letter bearing date of September 30, 1921, and I call attention to the letter dated September 30, 1921, which is marked Exhibit "D"; also letter from the Jackson & Eastern to Mr. Jones, marked Exhibit "U" bearing date of October 6, 1921.

Q. Now, Mr. Neville, after you failed to get any agreement with the A. & V. what was your next step?

A. I filed an application with the Interstate Commerce Commission.

Q. Without going into the details of that, state to the Court whether [fol. 909] or not you got permission from the Interstate Commerce Commission to build?

Mr. Monroe: We object to any action of the Interstate Commerce Commission, that can be shown from the records.

Q. I call your attention to a letter dated February 2, 1922, introduced by the complainant, purporting to be a letter from G. B. McGinty, Secretary of the Interstate Commerce Commission, I will ask you to look at that letter and state whether or not you received it?

A. It was.

Q. Hand it to Mr. Monroe, if he wants to look at it.

Mr. Stone: We desire to introduce this letter, if the Court please, as Exhibit "4" to the testimony of Mr. Neville. It is a long letter and I will just read the part touching this question.

Mr. Monroe: I ask that it all be read to the Court now.

(The letter was here read to the Court, and was then introduced as Exhibit "4" to the testimony of S. A. Neville.)

[fol. 910] Q. Was there anything further done by you before the Interstate Commerce Commission?

A. Nothing before the Interstate Commerce Commission. abandoned that idea.

Q. Then, what other policy did you seek, if any?

A. I abandoned the idea of the connection with the A. & V. Railroad before the Commission and by the advice of counsel resorted to the state laws to obtain that right, and I dismissed before the Commission that application——

Mr. Monroe: We ask that the writing be produced.

Q. I will ask you, what efforts, if any, you made under the State Laws?

Mr. Monroe: We move that the above answer be stricken out, make these objections and he just goes on before I get a ruling on them.

Q. Have you got the letter?

A. I can get it.

Q. I will ask you to get it.

A. I will get it.

Mr. Monroe: We have no objection to that.

Q. What effort, if any, did you make under our state laws before the Legislature or before the State Commission?

A. I tried to get a bill passed by the Legislature duplicating the part of the Transportation Act——

Q. That was to use the terminal facilities?

A. Yes.

Q. What success did you have there?

A. The bill was killed before I got to Jackson. I received information [fol. 911] that the bill would be considered on a certain day, and I wired for them to wait until I got there, but when I got there I met Mr. Jones and the A. & V. people coming back from the demise of the bill.

Mr. Monroe: I ask that that testimony be identified in the record by the bill.

Mr. Stone: You can cross examine him when I get through.

Q. Was that the only bill you introduced?

A. The only bill.

Q. Mr. Neville, after you failed to get an agreement with the A. & V. officials, and after you failed before the Interstate Commerce Commission, and after you failed to get your bill through the Legislature authorizing the State Railroad Commission to grant that authority, then what did you do?

A. I undertook steps to complete my line from Sebastopol to Curran's Crossing and connect with the A. & V. at that point.

Q. What did you do with respect to filing an eminent domain suit?

A. The eminent domain suit was filed to obtain a switch connection.

Q. At what point?

A. At Curran's Crossing.

Mr. Monroe: We move to strike that out, the best evidence is the contents of the proceedings, and certainly Mr. Neville can't testify as to the contents.

The Court: That is right.

Q. Was that the proceeding that this injunction suit was brought to stop?

[fol. 912] A. Yes, sir.

Mr. Monroe: I understood that he sustained my motion.

The Court: I did sustain the motion.

Q. Mr. Neville, there is an allegation in the injunction suit, in the bill, to the effect, that it is your purpose by this eminent domain proceeding to get the use of the A. & V. tracks, and the A. & V. terminal facilities. State to the Court whether or not it was your purpose in bringing this suit to get any such rights under this suit?

Mr. Monroe: We object to the question. There is no allegation in the bill that it is the purpose, the allegation is, that the Complainant is advised, and I ask that the question be reformed.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

A. It certainly was not.

Mr. Monroe: I ask that the same objection be considered without repetition to this entire line of testimony, of course, with the same ruling by the Court and with my exceptions to his ruling.

Mr. Stone: I will certainly withdraw my agreement about counsel's objections, if he insists on making them anyway.

Q. State whether or not the defendant was advised or knew without advice either one, that you knew you couldn't obtain this right through an eminent domain suit?

Mr. Monroe: I make the same objection?

A. I never received any such advise, but I had sense enough to know that it couldn't be obtained, without advice.

Q. Then, so far as this is concerned, regardless of which way the [fol. 913] suit is decided, is it your purpose or your designs under this suit, to try to enjoy the terminal facilities of the A. & V., under this eminent domain proceedings?

Mr. Monroe: We make the same objection.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

A. It is not.

Q. I will ask you this question, how are short roads generally

built, that is whether the line is built all at once, or built along by degrees, so that the Court can understand, because he said it would depend upon the finances? I ask you how you are going to build this line, if you build it?

Mr. Monroe: We object, as it is entirely incompetent.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. How are they built?

Mr. Monroe: We object.

The Court: I can't judge until I know what his purpose is.

Mr. Monroe: I ask that counsel declare what his purpose is.

A. It is necessary to build roads by piece meal, for instance, when I built the M. & M. I first built to a connection of the A. & V. and then later on I built my entrance into the terminal.

Q. Tell the Court how you can construct a road, how you build a road, and carry the material?

Mr. Monroe: We object.

The Court: I sustain the objection.

Q. State to the Court whether or not a great deal of the money to build this road is coming out of the City of Jackson?

[fol. 914] Mr. Monroe: We object.

The Court: I sustain the objection.

Mr. Stone: We except to the ruling of the Court.

Q. Where is your road now completed to?

A. From Union to Walnut Grove.

Q. State to the Court why you undertook to get this connection at Curran's Crossing before you finished your line to that point?

A. The Interstate Commerce Commission——

Mr. Monroe: We object to any statement of the Interstate Commerce Commission.

The Court: Let's see what it is.

A. I was restricted to a certain length of time——

Mr. Monroe: We object to him testifying about any order from the Commission.

Q. Have you got any such order as that?

A. It is part of the thing we tried to introduce.

Mr. Monroe: Then, if the Court pleases, it speaks for itself.

Q. State whether or not it was your purpose to begin building from Curran's Crossing back?

A. I had already built the road ready for the rails.

Q. State to the Court how this connection with the A. & V. would aid you in building from that end?

A. I can't get the materials without it. I have got to have the connection to get the rails out to construct it with.

Q. Then were you building from one end or both?

A. Both ends.

Q. So that would enable you to quicken the time?

Mr. Monroe: We object to the question as leading.

[fol. 915] Q. Would that enable you to build it in a longer or shorter time?

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

A. Shorter.

Q. Now, Mr. Neville, they stated in their amendment that you had not finished the line to the point where the junction is sought. If this injunction had not been brought, under the ordinary conditions as you meet them in railroading, building railroads, as you are acquainted with them, state to the Court whether or not you would have had this road completed to that point before this time?

Mr. Monroe: We object to him asking the witness what he could have done in the future.

The Court: I think the question is thoroughly competent, and I overrule the objection.

Mr. Monroe: I except to the ruling of the Court. And I ask that the same objection apply to all this testimony without repetition.

Q. If this injunction had not stopped the work state whether or not you could have finished it before this time?

A. Absolutely.

Mr. Monroe: We move to strike out the question and answer.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

Q. Mr. Neville, I asked you this morning about the economic demand for a railroad near Pearson. I ought to have asked you about the economic justification. Did you answer your questions on the theory of economic demand or economic justification?

A. Justification.

[fol. 916] Mr. Monroe: I submit that that is a question for your Honor.

The Court: I regard that question as having very little probative value anyway.

Q. Now, about the junction here at Curran's Crossing, you stated early in your examination that you selected the best point east of the River. Give the Court your reason for thinking this is the best point?

A. It is the closest practical connection that can be made east of Pearl River, to get a connection that will not hurt either road and

that will be satisfactory from an operating standpoint and be near Jackson.

Q. What is the distance from the city limits of Jackson?

A. I would say something over a quarter of a mile.

Q. Do you know of any other railroad with its terminal facilities outside the corporate limit of the city?

A. I can't say that I do.

Q. Do you know of any objection to having the terminal facilities outside the corporate limits?

A. There is no objection. The only question is to get the interchange facilities. The question of the corporate limits cuts no figure with it.

Q. What opportunities are there for people to patronize this road if this connection granted to reach Jackson from the point at Curran's Crossing?

A. It could be done very satisfactorily from the standpoint of C. L. or less than car load shipments, of course it is not ideal, but it is a reasonably satisfactory operation.

[fol. 917] Q. Mr. Neville, you filed this eminent domain suit, and you stated that you had no intention of trying to use the A. & V. line or terminals?

Mr. Monroe: We make the same objection.

Q. Now state to the Court what your present purpose is with respect to your line?

A. My purpose at the time the eminent domain suit was filed was to put in a "Y" for turning my engines, put in a scale track, and put in the necessary interchange tracks, with a suitable depot, some point accessible to the concrete highway, and operate in that manner until such time as other arrangements could be made.

Q. Now, you state it is your purpose to put in depot facilities there?

A. Yes, sir.

Q. On whose line?

A. On the J. & E.

Q. You spoke of putting in a "Y," on whose line would that be located?

A. All of it would be on the J. & E. property.

Q. You spoke also of switch tracks, interchanges, on whose land will these be?

A. All on the land of the J. & E.

Q. Can those switch tracks, your "Y" and your depot facilities be built out there before you get the switch connection?

A. It can't be built until I get the switch connection.

Q. Why?

A. I can't get the materials to build them with.

Q. Now, there has been a good many intimations in the trial [fol. 918] this case that you will use the A. & V. right of way, that you might use the A. & V. right of way for interchange tracks. Have you made any effort to get any part of the right of way for that purpose?

A. I have not.

Q. Have you any idea of using any part of their right of way?

A. I have no such purpose.

Q. Where will all the structures be built?

A. On the J. & E. land entirely I, being the junior will have to supply all of this at my own cost.

Q. Being the junior carrier you have to furnish that at your own cost?

A. Yes, sir.

Q. And on your own property?

A. Yes, sir.

Q. Mr. Neville, quite a bit has been said about switching cars in on this straight line as shown by this map which has been introduced. Is that straight line your switch track connection?

Mr. Monroe: We object, that is an attempt to change the condemnation proceedings by verbal testimony. The map is the best evidence.

Q. Mr. Neville, take your "Y," and your interchange tracks, do any of them appear on this map you made an exhibit here?

A. It does not.

Q. Well, state to the Court whether or not there could be any exchange of traffic in car load lots between the J. & E. and the A. & V. before you built your interchange tracks?

A. Well, they could deliver me materials on this one track while [fol. 919] I had my interchange in progress, but that wouldn't be the operations of a railroad or the tendering of the regular interchange of traffic until such time as I had built all of my interchange tracks and yards and invited them to inspect them with a view of establishing interchange relations with them.

Q. That comes after you build your line?

A. Yes, sir.

Q. Do you know what the custom is in establishing these yards?

Mr. Monroe: We object to this, he is undertaking to talk about something entirely different.

Q. Mr. Neville, do you know what the custom is existing between junior railroads and senior railroads touching the question of the preparation of interchange tracks?

Mr. Monroe: We object to any custom.

The Court: I understand, and I think you are correct, but I will allow this question.

Mr. Monroe: I except to the ruling of the Court.

A. In my original application for the eminent domain proceeding I asked for—

Q. I asked you about the custom of establishing interchange tracks and who this duty falls upon?

A. The custom is for the junior line to furnish all of the interchange facilities unless by agreement.

Q. State to His Honor whether or not you can compel the A. & V.

to do any switching at all until you provide sufficient and efficient interchange switch tracks?

Mr. Monroe: We object to the legal question.

[fol. 920] The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

A. When I built the M. & M.

Mr. Monroe: We object to anything that was done when he built the M. & M.

The Court: Let's see what it is he is going to say.

A. When I built the interchange tracks, the A. & V. came down to look at them and they said they wouldn't put their engine on them, then I built them in accordance with their requirements and fixed them up before they would undertake to interchange freight. I had to meet their views on the matter.

Mr. Monroe: We move to strike out the answer as it is irrelevant and incompetent.

The Court: I overrule the objections.

Mr. Monroe: We except to the ruling of the Court.

Q. Mr. Neville, under that custom that you are talking about to the Court whether or not the A. & V. Railway Company would be required to move your stuff until you had prepared efficient and sufficient interchange switch tracks?

Mr. Monroe: We make the same objection.

A. They certainly would not.

Q. Is this line on this map that has been referred to, is that any part of the interchange tracks?

Mr. Monroe: We object, the map is in evidence.

Q. I show you, Mr. Neville, map marked Hayden "A", Exhibit 4, and I ask you to point out to the Court the connection, the proposed connection between the J. & E. and the A. & V.?

[fol. 921] A. This map was made by my locating engineer, he was employed to make a survey of the main line railroad from Sebastopol to this connection with the A. & V. and it doesn't show the switch tracks.

Q. Show the Court on this map where, approximately where, you propose to build your yards and fix your interchange tracks?

Mr. Monroe: If the Court please, we object to them supplying oral testimony where these yards are to be, when nothing is shown about them in writing.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

Q. Show me, Mr. Neville?

Mr. Monroe: We want to make the same objection.

A. The "Y" would be constructed on the west side of the concrete road, and the interchange tracks will be built between the concrete road and the A. & V. right of way, so that the western end of the interchange will open in here, and open in the A. & V. on the east end. And the north end of the interchange track will be used by the J. & E. in putting in and setting out its cars and the west end by the A. & V.

Q. Will any part of this interchange track be on the A. & V. property?

A. None except the connection, that we have condemned for that track.

Q. This map shows the railroad, the direction?

A. Yes, sir.

Q. Is that interchange track there?

A. No.

[fol. 922] Mr. Monroe: We make the same objection and the same motion to strike out.

Q. Mr. Neville, before starting this eminent domain proceeding, State to the Court whether or not you had acquired any property rights for the building of your road to this point?

Mr. Monroe: We object on the ground that the deeds are the best evidence.

Q. I just asked him if he had acquired any property, I didn't ask the contents of the deeds?

The Court: Go ahead.

Q. Have you acquired this property?

A. Yes.

Q. Have you got the deeds?

A. I have them.

Q. Where are they?

A. I turned them over to you.

The Court: I think the right of way will have to be proven by the deeds.

Mr. Stone: I intend to get them.

The Court: You had better introduce the deeds.

Q. Mr. Neville, I hand you a batch of papers, and I ask you what they are?

A. They are the right of way deeds in Rankin County, Mississippi.

Q. Right of way deeds in favor of whom?

A. The J. & E. Railway Company.

Q. Will you introduce those deeds and have them marked as an Exhibit to your testimony?

[fol. 923] A. I will.

Mr. Monroe:

Q. Are those deeds in the order of their dates?

A. I don't know.

By Mr. Stone:

Q. Will you read those deeds, the name of the grantor, the name of the grantee and the date of the deed and the consideration to the stenographer?

Mr. Monroe: And a description of the property.

The Court: I think you will have to introduce each deed separately.

Mr. Monroe: I have, or am having a statement made up from the deeds showing the grantor, the grantee, the description and the consideration.

The Court: You can introduce a copy of the deeds.

Witness: We don't want the deeds to get out of my hands.

Agreement.—It is agreed by counsel on both sides that in lieu of the introduction of the right of way deeds that a transcript will be gotten up showing the grantor, the gra-tee, the date and the description of the property and the consideration expressed in the deed, this transcript may be introduced in evidence as to the information of the J. & E. right of way deeds in Rankin County.

[fol. 924] Q. Mr. Neville, do these deeds show the exact date of purchase by you of these rights of way?

A. They were originally covered by an option or contract and the date of these deeds is the date I paid for the property before the expiration of the contract.

Q. Do you know where those options are?

A. I think in my office.

Mr. Monroe: We object to any testimony about any options.

Q. The point I am asking you is if the deeds bear the date of the original contract or the date of the purchase?

A. The deeds for the considerations over One Dollar bear the date of the execution and not for the original contract for the deed.

Mr. Monroe: We move to strike out the question and answer, because the writing is the best evidence.

Q. Do or do not these deeds show the correct consideration in each instance?

A. They do.

Q. And these deeds comprise what part of your right of way in Rankin County?

A. All except possibly two miles that I have an agreement for, or negotiating for an agreement.

Mr. Monroe: We object on the ground that the agreement is the best evidence.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Mr. Neville, these deeds refer only to your right of way in Rankin County?

[fol. 925] A. That is true.

Q. It does not include any part acquired east of Rankin County?

A. No, sir.

Q. Has any of that been procured?

A. It has all been procured with a few exceptions.

Q. Mr. Neville, going back to the point of junction, I want to ask you something about the dangers connected with this point of junction. Go ahead and in your own language and tell the Court what, or from your experience as a railroad man in laying out railroad tracks, constructing them and operating them, whether this junction at Curran's Crossing is a dangerous junction or not, and if so why?

Mr. Monroe: The witness has never said he had had any actual operating experience, and we object.

The Court: Hasn't he asked him about his experience?

Q. We will develop that further. Mr. Neville, state to the Court whether or not your duties as an owner of a railroad and as a railroad executive you have familiarized yourself with the operation of trains, and if so, how?

A. I have been in the active control of the operation of a railroad for nearly 12 years, and I am thoroughly familiar from every standpoint of the operation of trains except some of the rules in the transportation department, such as switching and conductors, or something like that.

Mr. Monroe: We object.

Q. You have never been an engineer or conductor?

A. No.

[fol. 926] Q. State whether or not in handling the operations of a railroad as executive head you have been brought in touch with the different question- so as to familiarize yourself with railroading needs?

A. I have in every instance, as in this instance, before the location was decided upon I made a personal investigation for myself to determine if there were physical difficulties and dangers that would interfere with the adoption of the location selected by the engineers.

By Mr. Monroe:

Q. Mr. Neville, prior to 12 years ago what was your business?

A. Patronizing railroads.

Q. In the hardware business in Meridian?

A. Hardware and manufacturing.

Q. During the last 12 years you have been connected with the Meridian & Memphis? What is the length of the M. & M.?

A. 32 miles long and the J. & E. operations 24 miles.

Q. What is the width?

A. The same as other railroads.

Q. What is the density of the traffic of the M. & M. compared with the traffic of the A. & V.?

A. It is not as great.

Q. Is it comparable at all?

A. Any similar operation is comparable, but it is not anything like the volume.

Q. How many times the M. & M. is the A. & V. volume?

A. The A. & V. would be considerably more.

Q. How many times, 10, 15 or 20?

[fol. 927] A. You want to guess, and I don't know.

Q. It would be much more?

A. It would.

Q. What about the speed of the trains on the M. & M.?

A. They operate about 40 miles an hour.

Q. How does that compare with the speed of the trains on the A. & V.?

A. I believe Mr. Ford said that they operated their trains at Curran's Crossing at the rate of 60 miles an hour.

Q. What about the number of the trains per day on the M. & M. in each direction?

A. Sometimes Six.

Q. Per day?

A. Three each way.

Q. That is sometimes, what is the normal number?

A. It used to be six, they only run one each way now.

Q. And you used to run two each way?

A. Yes.

Q. In other words you run two passenger trains each way a day?

A. And sometimes an extra.

Q. The A. & V. is a first class road?

A. It is.

Q. What do you mean by a first class road?

A. A railroad operating on a certain standard, the standard known as the first class railroad.

Mr. Monroe: We submit that Mr. Neville has never been connected with a Class One railroad, and has never been in charge or had any operating experience of a Class One railroad, and we object to him [fol. 928] testifying.

By Mr. Stone:

Q. Mr. Neville, are the operations of trains on first class roads any different in their handling than the roads you have been operating?

A. No, sir, the requirements of the Interstate Commerce Commission is for the operations similar without reference to length.

Q. What is the difference in the handling of trains on first class roads and the ones like you have been operation?

Mr. Monroe: We object, he has never operated a first class road.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. What is the difference in the handling of trains on the M. & M. and the J. & E. and the handling of trains on the A. & V.?

A. The principle thing is the magnitude.

Q. The magnitude?

A. Yes, sir.

Q. In handling trains on first class railroads do they use an engineer, fireman and brakeman?

A. They do.

Mr. Monroe: We object.

Q. What do they do on short lines?

A. We handle all our business in the same manner, and our equipment is the same, with the same kind of operations.

Mr. Monroe: We object to this entire line of testimony.

Q. What is the difference in the way they handle the stuff?

[fol. 929] A. It is the same.

Q. What is the difference in handling the interchange traffic between second class roads and first class roads?

A. The main thing is the big man has more than the little fellow.

Q. Is there any difference in handling it?

A. Not a bit.

Mr. Monroe: We move to strike out the questions and answers. He has testified that he never handled any traffic on big roads.

The Court: I will let it in.

Mr. Monroe:

Q. Mr. Neville, you testified, I believe, that the only difference was the degree. Is there more danger at a junction where there is heavy traffic?

A. Where there is heavy traffic.

Q. Is there more danger at a junction point where the trains and locomotives are heavy and running at high speed on a junction than where the trains and locomotives are light and running at low speed?

A. There is more danger in certain operations from the high speed, depending on the type of the equipment.

Q. I believe you said that you had never handled a Class One Railroad?

A. I am thoroughly familiar with the operations.

Q. Have you had personal experience in handling them?

A. I have had connection with first class railroads.

Q. Physical connection?

A. And interchanged traffic with them.

[fol. 930] Q. That is all?

A. I have observed their operations.

Q. You never had control of one?

A. I have never run the A. & V.

Q. You were never responsible for the operations of any Class One Railroad?

A. No.

Mr. Monroe: We object to him testifying along this line.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court, and make the same objection without repetition to the entire testimony.

By Mr. Stone:

Q. In your own way go ahead and tell the Court whether or not in your judgment the point of junction at Curran's Crossing is a dangerous or a reasonably safe point of junction?

A. Any operation of a railroad is dangerous anywhere, but this is not an unduly dangerous place.

Q. You mean that the business of railroading is dangerous?

A. The operations of trains is a dangerous business under perfect conditions, but there is nothing at this point of junction with the A. & V. Railroad that makes it unduly dangerous — operations.

Q. Take the elevation of the track there, what has that to do with it?

A. The elevation of the track doesn't add to or take away from the danger. The track must be built upon standard grounds and must be built without reference to the height of the track. In other words it must be safe whether it is on level ground or on a fill. In running trains, *in* the speed of trains is not taken into account in [fol. 931] running over a fill.

Q. Have you had any experience with fills?

A. A great deal. I adopted a standard that the Class One roads have not adopted in this country.

Q. Mr. Neville, take the question of curves, is this junction on a curve?

A. There is no objection to curves, there are 96 curves on the A. & V. between Meridian and Vicksburg.

Q. Are there any points on the A. & V. road where there are curves with switches on the outside of the curve?

A. There are three or more places. There is no more risk, no more reason why there would be any more accidents than in any other operation on a curve than on a straight track.

Q. Mr. Neville, state to the Court how this simple switch connection would make the operations of trains on this dump and on this curve dangerous, if you know?

A. If that switch is put in properly, which would have to be done, there would not be an iota of danger to either railroad, so far as the operations of the trains, no more than if it was not there.

Q. Do you know where the public road crossing is there at Curran's Crossing?

A. Yes.

Q. What have you to say about that element of danger?

A. Of course, it is more dangerous for switching to be done across a highway or street than it is where they do not exist.

Q. Is that or not unduly dangerous?

A. It is not. The A. & V. within the last 12 months have put a [fol. 932] switch on the outside of a curve across 31st Avenue for the J. E. Wright Construction where there is 50 times as much traffic as there is over Curran's Crossing.

Mr. Monroe:

Q. Where is that?

A. Here in the City of Meridian.

Q. It is inside the yards, is it not?

A. Yes, sir.

By Mr. Stone:

Q. Mr. Monroe asked you the question as to whether or not that was in the yards. I will ask you if being in the yards would increase or diminish the danger?

A. Why, if it is in the yards there is necessarily more traffic than there would be otherwise. I think the danger would be the most where the operations are the most.

Q. Well, I understand that Curran's Crossing is already across the A. & V.?

A. Yes, sir.

Q. State to the Court how building this switch connection would increase the danger at Curran's Crossing?

A. It doesn't increase it. There is no more danger at Curran's Crossing than there would be at any other crossing. Of course, the more trains run the greater danger.

Q. Mr. Neville, what effect will this switch connection have on the A. & V. passenger trains?

A. Not a bit in the world.

Q. What effect will it have on the through freight trains?

[fol. 933] A. Not a bit. They will not stop or know it is there.

Q. What trains will actually be effected?

A. None except the switch engines coming out of the Jackson yards.

Q. Suppose that they decide to switch these cars by local trains?

A. They will not do that. I have the authority from Mr. Ford, the Vice President that it will not be done that way.

Mr. Monroe: We object to any statement that Mr. Ford made. The Court: I sustain the objection.

Q. Let's suppose that they undertake it with their local freights. Will the interchange of cars with the local freights increase the danger at that point, if so how? Will be increased by the cause of Curran's Crossing?

A. It would not increase the danger at Curran's Crossing except by having more trains switch over the crossing.

Q. Would the speed be greater or less?

Mr. Monroe: We object to the leading question.

A. Necessarily the operation is very slow approaching the switch.

Q. With the trains running more slowly will it increase or diminish the chance of accidents?

A. It would decrease the danger from the same train, which would be running faster otherwise generally speaking by the switch.

Q. On yesterday when Mr. Vick was on the stand Mr. Monroe asked him about trains coming from the east and going on west, how they could see the box cars of another train that was switching at this point of junction. I will ask you whether or not this point of junction is within the block signal?

A. The situation there is the same as it is in Meridian with the M. & M.

[fol. 934] Q. It is protected by the block signal?

A. The whole line is protected by the system.

Q. Between what two points?

A. Between Meridian and Jackson.

Q. Is there a block signal there at this particular point?

A. One between Curran's Crossing and Pearl River bridge and one to the east.

Q. With the block signal, state whether a train coming on there would go on there with another train on the track?

A. Certainly not.

Q. Mr. Neville, taking into consideration the location of these two trestles that have been testified about, what have you to say about the danger caused by the presence of these trestles, how would these trestles effect the passenger trains?

A. Not a bit in the world.

Q. If this connection was made?

A. Not a bit.

Q. And through freights?

A. Not a bit.

Q. Taking into consideration the elevation, the curve in the track, Curran's Crossing, a public road crossing, and the two trestles, and state whether or not, taking into consideration all of these points, in your judgment, Curran's Crossing is a reasonably safe place for this junction, and a feasible place?

A. It is a perfectly safe and feasible place. There is no increased danger not resulting from the increased operation.

Q. There has been quite a good deal said in this record about the [fol. 935] danger from floods. How long have you been familiar with Pearl River, if at all?

A. I have observed it casually for 30 years.

Q. Before you located this line of railroad what investigation did you make, if any, to ascertain about the flood conditions of Pearl River?

A. I made a study of the situation the best I could from every standpoint, and the result of my investigation convinced me that previous flood stages of Pearl River in the vicinity of Curran's Crossing was brought about by obstructions without adequate open-

ings of the A. & V., and since that has been corrected I have not seen any recurrence of that situation.

Q. You spoke of that being corrected?

A. The raising of the track and sufficient openings.

Q. To which openings do you refer?

A. The two trestles on either side of this line.

Q. East or west of Pearl River?

A. East of Pearl River. You can take a body of water that is going down stream——

Mr. Monroe: We object, he has not qualified as an expert in engineering, and does not even pretend to be an engineer.

The Court: I sustain the motion.

Mr. Monroe: I move to strike out the answer.

Q. Independent of what the conditions were with the A. & V. prior to the time of the wash out, I want you to tell the Court as to whether the junction of the J. & E. with the A. & V. at that point will effect the A. & V. railroad because of the high water?

Mr. Monroe: We object, he is not an engineer.

[fol. 936] The Court: I don't think that is competent.

Q. Give the Court your experience in handling water?

A. The Meridian & Memphis crosses four water ways, water courses, and I have never had a washout on account of the engineering or the manner the road was constructed and the water ways taken care of.

By Mr. Monroe:

Q. In building your roads across these water ways what did you have to do with the construction?

A. It had to be submitted to me by the engineer for my approval of taking care of the water way at that place.

Q. How many of those streams did you cross?

A. Four.

Mr. Stone: Will you give them to Mr. Monroe?

A. Okatibbee, with a 600 foot trestle, Tallahatta, four hundred foot trestle, and there is another one in there with a four hundred foot trestle, and the Chunky headwaters.

Mr. Monroe: You didn't give the trestle at Chunky?

A. That is 200 feet.

By Mr. Stone:

Q. When you recall the name of the other stream give it to Mr. Monroe, please. In each of those cases who passed upon the question of the construction finally?

A. I did.

Q. When you got to Pearl River you stated while ago that you made investigations to ascertain about the Pearl River floods?

A. I inquired in every way that I could.

Q. Who did you inquire from?

[fol. 937] A. I talked with the residents there, the people living along the line, with my engineers and with the people in Jackson in order to arrive at and get the necessary information.

Q. I will ask you to state whether or not you made sufficient investigation to satisfy you of the conduct of Pearl River during high water?

A. I did, and further I was satisfied that my investments in Pearl River would not be washed away by the floods of Pearl River.

Cross-examination by Mr. Monroe, for the complainant:

Q. Pearl River valley is several miles in extent, have you on the Meridian & Memphis anything approaching it?

A. No, sir.

Q. You have nothing that is really comparable with Pearl River?

A. Okatibbee goes away back.

Q. What is the width of the valley of Okatibbee?

A. Okatibbee is not so wide, I would say a mile. Then over on the J. & E. I have the Tuskameta, that is four miles wide.

Q. Do you desire to leave the impression on the record and on his Honor, that the flood problems there are at all comparable with the flood problems in Pearl River Valley in extent?

A. They are all comparable to some extent.

Q. They are not in the same class?

A. No, sir.

Q. Do you mean to leave the impression on the Court and the record that your experience with small streams qualifies you as an engineer, capable of coping with the Pearl River problems?

A. Yes, sir.

Q. And it is that experience that you have in mind when you give [fol. 938] this testimony about Pearl River?

A. I have studied and observed the Pearl River conditions.

Q. You were asked to pass on the question of openings, did you make any figures on it?

A. I discussed it in detail with my engineers when the plans were submitted to me for the construction.

Q. You didn't get up the data?

A. All that work was submitted to me for my approval and for such changes as I wanted to make.

Q. As a matter of fact you were not qualified to do the engineering work?

A. I couldn't do the details, that part of it.

By Mr. Stone:

Q. Was it necessary for you to see Pearl River during its stage of flood in order to know its behavior?

A. I have seen Pearl River in its flood stages way back yonder 20 years ago.

Mr. Stone: We submit that he is competent;

Mr. Monroe: We object, as he is not an engineer and is not competent to testify.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

By Mr. Stone:

Q. Tell the Court whether or not the construction of the junction of the J. & E. with the A. & V. at the point proposed will endanger the A. & V. property during flood periods in Pearl River?

A. It absolutely will not, in my opinion.

Q. Why?

[fol. 939] A. The way the road bed runs with the stream, and for miles we have left sufficient openings that will maintain an even flow of the water on the other side of the dump, and as we go down across the highway, the highway bridge is four feet lower than the A. & V. bridge up to the point near where, near the approach to the connection, so that, in event of those disastrous floods, the water passes over the top of the J. & E. and it is still four and a half feet lower than the A. & V. bridge, so that in the order of our calculations it can work no hardship against the A. & V.

Q. When the first flood waters begin to come down where is the first opening it would strike?

A. It is up a good many miles up there.

Q. Above Hog Creek?

A. Yes, sir, above Hog Creek.

Q. When it strikes the first depression running out from the River, is there an opening there?

A. Yes.

Q. When the River runs out there at that point nearest the junction, what happens?

A. There is an opening there.

Q. Back towards, back east?

A. East from the River.

Q. When you get to Hog Creek, is there any depression and opening there?

A. Yes, sir, there. That water instead of going back into Pearl River and increasing the water there, goes down past to the east.

Mr. Monroe: We move to strike that out.

[fol. 940] The Court: I ruled awhile ago and said he was a competent witness.

Mr. Monroe: I except to the ruling of the Court.

Q. Mr. Neville, ignoring the road bed of your road with reference to the right of way of the A. & V., just at the connection where this connection is sought, what effect could the connection have on the high water?

A. Not a particle.

Q. In order that you may reach that point would you have already crossed the high water or not?

A. Already crossed the high water, and it would not be possible to effect it in any way shape or form.

Q. How much dump have you built at or near the A. & V. track?

A. The work has been done, except to cross the highway.

Q. How long has that been done?

A. About two years.

Q. Have there been any high waters since then?

A. Yes, we have greater rains and floods within the last 12 months than in years.

Q. What effect, if any, has this dump had on the property of the A. & V.?

A. Not a bit in the world.

Q. Now, I would like to ask you why it is dangerous to have this connection at this point because of the existence of the trestles. Do you know whether or not there are along the line of the A. & V. Railroad trestles in their switch yards over which they switch their trains?

[fol. 941] A. Yes, sir, between two of their main side tracks, switch tracks, their depot track and the Royal Feed and Milling Company, there is an unprotected trestles across Town Creek that they use daily switching their in the yard limits by the A. & V. trains.

Q. State whether you have been there and seen the switching across that place?

A. I have.

Q. What is the length of the trestle?

A. I couldn't tell you exactly. I am sure it is 200 feet long.

Q. Do you know of other places along their line where they have trestles that they switch across?

A. They built a wire fence on their right of way of the Meridian interchange, instead of putting in a surface track and the trains switching over it.

Q. How long is it?

A. It is six or 8 feet in length, too long for practical purposes. A man has got to walk across it.

Q. It is further than he can jump across?

A. Yes, and they have got it wired in.

Q. Do you recall any other place where they have trestles in their switch yards and switch across them?

A. No, I don't recall any other at this time.

Q. I want to ask you further about this curve. I believe there is a curve at the proposed point of junction?

A. Yes, sir, a one degree and 50 minute curve.

Q. You spoke awhile ago about a number of curves on the A. & V. Do you know any that are stiffer than this curve?

A. There is a 12 degree curve in the yard limits of Jackson, and [fol. 942] a 16 degree curve in Vicksburg.

Q. And this is a one degree and 50 minute curve?

A. Yes, sir.

Q. You said something about having curves with switch connections on the outside of curves. Do you know of any on the A. & V.?

A. I know three on their main line, and of course in the yards they are numerous, more or less.

Q. Do you know of any in the yard at Meridian, a switch track on the outside of a curve?

A. They put in one for the J. E. Wright Construction Company.

Q. What about the switch track down near the Fertilizer Factory, do you know anything about that switch?

A. I don't know which one you have reference to.

Q. Between the N. O. & N. E. and the A. & V., is there one?

A. The New Orleans & Northeastern comes into Meridian on a curve and comes into the A. & V.

Q. What about a switch track on the outside of a curve?

A. I don't know anything about that.

Cross-examination by Mr. Monroe, for the complainant:

Q. Mr. Neville, if you had the option of having a junction on a straight track and having a junction on a curve, which would you prefer?

A. The straight piece of track.

Q. If you had the option of having a junction on a fill or on a level piece of ground, which would you prefer?

A. I don't see as that cuts any figure.

Q. If you had the option of having a junction between two 400 feet trestles, or at a place where there were no trestles, which would [fol. 943] you prefer?

A. I would prefer to have the railroad without trestles at all, but the trestle 400 feet from the point, couldn't be a serious objection.

Q. If you had the option of having a junction at the immediate vicinity of a much used public highway crossing or at a place where there was no crossing, which would you prefer?

A. I would prefer to have it where there was no highway crossing.

Q. If you had the option of having a junction within the reach of the flood waters of an unruly river, or out of reach of the flood waters, which would you prefer?

A. If it was a matter of cost, I would state——

Q. I asked you the question, answer yes, or no?

A. If the track was level I don't know as it cuts any figure.

Q. Why would you prefer to have your junction away from the highway crossing?

A. Because a highway crossing is like railroad operations over streets, it is objectionable, there is an element of danger to be considered.

Q. What is that element of danger?

A. It is an element that every railroad has to contend with.

Q. Would you explain that please?

A. You have got to block that public crossing.

Q. It is dangerous to the public and the railroad both?

A. To both of them, yes, sir.

Q. If a junction is established near a highway crossing will the number of train movements over the crossing be increased or diminished?

[fol. 944] A. The more business that develops the greater the number of movements over the highway.

Q. Suppose the business of the two roads remains stationary will the result of putting that junction at that point be to increase or diminish the number of movements?

A. To increase it.

Q. A witness testified that where one movement took place over the highway, that it would be increased to three movements, is that correct?

A. I think so.

Q. Is the switching movement over a highway crossing confronted with danger?

A. It is.

Q. To whom, the public or to the road?

A. Both.

Q. Why would you prefer to have your junction on a straight piece of track rather than on a curve?

A. Because the straight track is the ideal railroad construction. That is the ideal that every railroad strives for, to get a straight track.

Q. Why is a curve not ideal?

A. Well, the rail wears off more on the curve, and requires greater number of replacements.

Q. Is that the only objection?

A. No, sir.

Q. What are the other objections?

A. Well, it is just commonly supposed that the operations of a train over a curve is an element of danger, more than on a straight [fol. 945] track.

Q. Is that element of danger increased by the junction being on the outside of the curve?

A. I don't think so.

Q. You just as soon have your junction on a curve as on a straight track?

A. I think the straight track in every case is preferable in the construction and the operation of a railroad, but at the same time have had as much trouble on a straight track as on a curve.

Q. Is the view of the engineer as he approaches the curve obstructed in any way?

A. The view of the engineer from this curve is not obstructed, the vision of the engineer at this curve is possible from a safety point.

Mr. Monroe: We move the answer be stricken out, it is no response to the question.

The Court: I sustain the motion.

Q. I would like you to explain to the Court just how that is, how the view of the engineer is obstructed?

A. Because in approaching the curve his position is rigid, and the locomotive approaches the curve, comes close to it, from a d

tance his vision is not obstructed, but when he gets close to it, before he gets there his vision is complete, but later on it is obstructed by the head of the locomotive.

Q. And the engineer from where he sits in his cab his vision of the side of the fireman's track is obscured, is it not?

A. The distance depends on the distance he is from it.

Q. But what I say is, when the engineer sits in the cab his view [fol. 946] of the fireman's side of the track is obstructed by the boiler head?

A. Yes.

Q. He can only see that side of the track, and to that extent his vision is cut off by the front end of the boiler head?

A. That is true.

Q. Therefore, if the boiler head is inclined in a curve it lessens the distance he can see up the front, is that right, no matter if it is a slight curve?

A. At a certain distance.

Q. In other words, no matter how slight the curve it lessens the distance that the engineer can see his track?

A. If the engineer is a certain distance from the curve he can get a vision of the whole right of way, it all depends on the distance he is from the curve.

Q. Let's take this sheet, which we will mark 1,000 X, and draw a diagram on it of the cab and the locomotive and boiler head, and let's say that the engineer is at the point "A" and his line of vision proceeds to the right hand corner of the boiler head which is marked "B" and goes diagonally across the track in front of him?

A. It does.

Q. He now gets on the curve in the track, the boiler head is moved so that the cab is now in the second position. The engineer's eye is at point "C" and his line of vision proceeds to the right of the boiler head to the point marked "D." Then he can see only his half of the track, can he?

A. I guess you are right, I don't understand what you are saying.

Q. Then, it is a fact, that no matter how slight the curve may be [fol. 947] if the engineer is on the outside of the curve the distance he can see up the track in front of his train is lessened?

A. His vision is greater for the distance——

Q. But I asked you if his vision was not lessened no matter how slight the curve?

A. It is.

Q. His vision is lessened?

A. Absolutely.

Q. You said that you had seen the high water in Pearl River, was that recently or years ago?

A. Yes, sir, recently.

Q. What year?

A. In 1921, I think it was. I am sure it was.

Q. How high was the water with reference to the public road when you saw it, the road north of the A. & V.?

A. In one or two places it looked like it was beginning to go over, to go over the road.

Q. You say that was in 1921?

A. I am sure it was in 1921 and since. It was while we were carrying on our investigations out there.

Q. What is going to be the level of the top of the rail of the J. & E. with reference to the elevation of that public road?

A. It will be about 14 inches higher than the top of the road. Of course we will make the road conform to it.

Q. When you get there you are going to be higher than the public road?

A. No, we will make the road conform to it, to our line.

Q. How does the elevation of your rail compare with the elevation [fol. 948] of the public road?

A. It is about 14 inches higher.

Q. Than the public road?

A. Yes.

Q. Do you mean to tell the Court and leave the impression on this record that to establish that bank of the J. & E. in that valley will not in any way whatever deflect the waters of Pearl River in flood stages over towards the Farish Bridge and Pearl River Bridge of the A. & V.?

A. It is my opinion that the waters on the other side of the J. & E. will be the same.

Q. I asked you if you built all your embankment?

A. It wouldn't be possible to do it.

Q. Do you dispute the proposition that the mere driving of piles, like a fish trap, diagonally across the current of water, will not effect, or increase the elevation of the water on the up stream side of that line of piles?

Mr. Stone: We object to what he disputes.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. Anything you put in the water necessarily effects it to a small degree, almost imperceptible. The driving of the piles would be like putting a tub in this room of water, it would effect it but not perceptibly.

Q. And your testimony is that the J. & E. embankment will not effect the A. & V.?

A. There are openings enough for the water to go down on the [fol. 949] other side. If there were not sufficient openings it might.

Q. It won't have no effect at all?

A. In a minute degree.

Q. What effect would you say it would have?

A. Just take this room full of water and put down a tub in it, it would have about the same effect, on the height of the water. You couldn't see it, it would be so small.

Q. But you do say that it would effect it somewhat?

A. Well, yes.

Q. What effect would it have with your amount of openings?

A. The more openings the less effect it would have.

Q. You have testified that you have authority from Mr. Ford to the effect that the A. & V. would handle the J. & E. interchange from Jackson with switch engines. I call your attention to Mr. Ford's testimony, which is as follows: But I ask you after calling your attention to that, if you still say that he made that statement?

A. I do.

Q. The testimony is on page 75, beginning, didn't you tell Mr. Neville here at the time, Mr. S. A. Neville, President of the Jackson & Eastern Railroad, that if this junction was made at this point indicated with the A. & V. that the exchange of cars would be made by your road by means of switch engines? A. No, sir, I did not.

Q. After hearing that testimony do you still state that Mr. Ford said that to you?

A. He said it most positively. I am sure that Mr. Ford forgot it or he wouldn't have made that statement. I remember at the time about his remark something about President Coolidge being brief, [fol. 950] and that is why I remember the statement.

Q. 'You didn't tell him that while the matter was being testified about in a conversation with him in the courtroom, before we moved down stairs?

A. I did not.'

— You still say that he made that statement to you?

A. I most certainly do.

Q. Do you know, Mr. Neville, of any instance that you can name to me in which there has been established a junction between two railroads at a point which was on the outside of a curve, on a 10 foot wide, between two 400 foot trestles, in the immediate vicinity of a high-way crossing, and in the flood reach of an unruly river?

A. I don't know as there is such a one anywhere else in the world.

Q. You stated to Mr. Stone on direct examination what your purpose was with reference to operations at the time of the eminent domain suit. In order that there may be no misunderstanding between us I would like for you to re-state them?

A. I believe that I said I intended to build a "Y," build a scale track, interchange track and a suitable depot. That is my present plan and was my plan then.

Q. And to operate in that manner?

A. For an indefinite length of time.

Q. You could do that at this point two and a half miles to the east, could you not? You could build your "Y," put in your scale track and your interchange track and depot?

A. I could not.

Q. Is there any reason why you couldn't?

A. I couldn't get the money.

[fol. 951] Q. Is there any reason why you couldn't build your "Y"?

A. I couldn't get the money.

Q. Is there any reason why you couldn't build your scale track?

A. Yes, sir, that point would be a temporary proposition. We expect sometime to go into Jackson.

Q. You are hoping to go into Jackson

A. Yes, sometime.

Q. Why don't you build your railroad straight across into Jackson, into the right of way of the Great Northern, behind the Old Capitol?

A. Well, haven't you been trying to buy the Great Northern right of way, by the time I get ready you might have the right of way bought away from me.

Q. We haven't bought it?

A. I don't know.

Q. You stated in your application to the Interstate Commerce Commission that you proposed to utilize it?

A. I have my testimony here. Do you want to see it?

Q. No.

Mr. Stone: We insist that the record is the best evidence.

Q. Mr. Neville, I show you this document, marked "D" and "D-1" and after you have refreshed your memory I ask you, if you didn't propose to go into the city of Jackson on the main line track of the A. & V. to the track of the Great Northern Railroad, as now located on Commerce Street?

A. Yes, sir, I negotiated with them for the use of the right of way.

Q. Why is it that you didn't go straight across that bottom and into Jackson behind the Old Capitol?

[fol. 952] A. It is an impractical construction for a 75 mile railroad.

Q. Would that be shorter mileage for your road

A. The mileage into Jackson would be about the same.

Q. Do you mean to tell the Court, Mr. Neville, that the mileage would be the same by going from Liberty Church or Drake's Church directly into Jackson as shown on the line Exhibit "O," or if you wanted to go from Liberty Church into Jackson by Curran's Crossing and over the A. & V.?

A. The trouble is you can't get a straight line into Jackson.

Q. Why don't you take that line, A-B

A. Because it is impractical for a 75 mile operation to go to that terminal expense and trouble, and not only the trouble and expense, the dangers of making the physical connection in the streets of Jackson would be greater than at this point.

Q. What is the expense that you are speaking of?

A. Getting a connection with the A. & V., the G. & S. I., the N. O. G. N., and the I. C. Railroads.

Q. Is that all the expense

A. Right of way in the City of Jackson.

Q. But that would be very little expense, your right of way before you crossed the river?

A. Very little to the river.

Q. You could get that substantially given to you?

A. Yes, sir.

Q. Now, when you get to the river what would be the expense?

A. That is the chief proposition, crossing that river with a bridge,

and bridges to the river. And I would have to get authority to cross. [fol. 953] Q. We are talking about the expense. What are your objections?

A. Getting a right of way through Jackson.

Q. How would the expense of the bridge compare with the other expense, what proportion of the total?

A. The bridge would cost, at least, the bridge and the bridges approaching the river, One hundred Thousand Dollars.

Q. What proportion of the expense would that be?

A. It is my judgment that the N. O. G. N. paid One Thousand Dollars.

Q. For a right of way through Jackson?

A. Yes, sir.

Q. If you went across up above you would be in the immediate vicinity of the N. O. G. N. right of way?

A. Yes, sir.

Q. And you stated that you had been negotiating with them for a right of way?

A. Yes, sir.

Q. And these negotiations, I suppose, are still pending?

A. They have not been pending recently. But I have been negotiating also, having some other negotiations likely to change and make it possible for me to use their facilities.

Q. What other negotiations?

A. I don't think I am called upon to tell them.

Q. I think you are?

A. I don't have to.

Mr. Monroe: If the Court please, the negotiations he is speaking about is with reference to other carriers in the City of Jackson, and we certainly think we ought to know about them.

[fol. 954] Mr. Stone: They are his private negotiations.

The Court: I don't think that has anything to do with it, the negotiations have not consummated.

Mr. Monroe: We except to the ruling of the Court.

Q. You stated frankly that you thought you could get a right of way given you to the river. I presume you could get a right of way over lines One-two or One-three? In the same manner?

A. I don't apprehend such a right of way at all, and in addition to that I have no authority to build over either one of those lines.

Mr. Monroe: We object, and move to strike that part of his answer out, it is not responsive to the question.

The Court: I sustain the motion.

Mr. Stone: We except to the ruling of the Court.

Q. You stated yesterday that in order to *live* a short line road such as you had contemplated building would have to form a connecting link between other lines. What other lines have you in mind as a connecting line between them?

A. The G. & S. I. and the N. O. G. N.

Q. The N. O. G. N. has terminal facilities in Jackson?

A. Yes, sir.

Q. And has a right of way in the streets of Jackson?

A. Yes, sir. The N. O. G. N. has a right of way behind the Capitol if it has not been sold.

Q. And that right of way would be in a direct line of the A.-B. if you went straight across the river?

A. I have no authority to use their right of way.

[fol. 955] Q. I asked you if that right of way of the N. O. G. N. would not be on a direct route, A-B?

A. Then I would have to come down here nearly to Curran's Crossing.

Q. But isn't it on a direct line as shown here on this map?

A. Taking an air line, it is direct. Still you would have to come down here even with Curran's Crossing across the river.

Q. I am speaking of the N. O. G. N. behind the Old Capitol?

A. If you wanted to go on an extremely northern air line it would be better, but I could get better service by coming down here.

Q. And that would be quickest?

A. Yes.

Q. The northern end of the N. O. G. N. right of way would be the quickest way?

A. Yes, sir.

Q. Materially so?

A. Some, yes.

Q. Now, if you did that you would be making a direct connection with your line in the yard of the N. O. G. N. which is your object?

A. Yes, sir.

Q. Whereas if you come down to Curran's Crossing you would have to connect with the N. O. G. N. by going over the A. & V. that correct?

A. That is correct.

Q. What was the other line with which you propose to connect?

A. The G. & S. I.

Q. Where is the closest point to the G. & S. I.?

[fol. 956] A. I would say it would be there at Curran's Crossing south of the A. & V.

Q. South of the A. & V.?

A. Yes, sir.

Q. And if you wanted to join at this point near Pearson's G. & S. I. would still be south?

A. South quite a distance.

Q. How far is it from Curran's Crossing on the A. & V. to the closest point on the G. & S. I.?

A. I don't know.

Q. How far is it from Pearson, or this point west of Pearson?

A. I don't know. But that would be a back haul. You would have to go south and go back north to Jackson.

Q. On the G. & S. I.?

A. Yes, sir.

Q. But you could get to the G. & S. I. quicker?

A. No, sir.

The Court: We will adjourn until tomorrow at nine o'clock.

[fol. 957] Wednesday, January 23, 1924—nine o'clock a. m.

Mr. Monroe: With reference to the stipulation yesterday with reference to the right of way deeds, in lieu of the 67 right of way deeds in Rankin County to the J. & E. Railroad, there is filed herewith, marked Exhibit "5" to the testimony of S. A. Neville, an outline showing in each instance the name of the grantor, the name of the grantee, the description of the property, the consideration and the date of the deed.

This Exhibit was then and there so identified by the stenographer.

[fol. 958] S. A. NEVILLE, having resumed the witness stand, testified as follows, to-wit:

Cross-examination by Mr. Monroe, for the complainant:

Q. I understood you to say yesterday that there was a gap in this right of way as shown by the 67 deed, which was abstracted on this Exhibit "5" to the testimony of S. A. Neville. Did I correctly understand you?

A. Yes, sir.

Q. To what extent do these gaps extend, what distance along the right of way?

A. There was two pieces between the concrete road and the A. & V. that I had an option on.

Q. I want to know the length of it?

A. I should say less than two miles, in the entire — of Rankin County.

Q. What is it between Liberty Church and the proposed junction at Curran's Crossing?

A. I would say two miles.

Q. Between Liberty Church and Curran's Crossing?

A. Yes, sir, I had an agreement about this.

Q. And you said that you would bring this agreement in?

A. I have brought all of them here.

Q. Let's see the ones you brought in?

A. The ones I brought in here. You had them.

Q. The contracts, that is what I am asking for?

A. I have no contracts with me. I have the deeds. I had contracts and then I got a deed to the right of way.

Q. I asked you if you had documents covering this two miles of [fol. 959] gaps in the right of way between Liberty Church and Curran's Crossing?

A. I did.

Q. Have you brought them?

A. No, I have not.

Q. You remember that I asked you to bring them in yesterday?

A. There was this situation, there was another piece of property called the Carter property.

Q. I haven't asked you to testify about that. I asked you to bring in the documents?

A. The only piece of any consequence that was not closed before was the Carter estate, and one of my associates had the right to build a mill on it and that carried with it the right of way rights.

Mr. Monroe: We object to the contract and move to strike it from the record.

Mr. Stone: Have you got that contract?

A. No, I have not.

Mr. Stone: It is held by other parties?

A. Yes, sir.

By Mr. Monroe:

A. Are there any contracts you have yourself not brought in here, Mr. Neville?

A. Yes, sir.

Q. You remember that I asked you to bring them?

A. I didn't understand it that way.

Q. Will you bring them?

A. I will.

[fol. 960] Mr. Monroe: If the Court please, I move now, to keep the record straight to exclude any evidence as to these contracts, because the contracts themselves are the best evidence.

The Court: Any evidence as to the contents of the contracts will be excluded.

By Mr. Monroe:

Q. Mr. Neville, I believe you stated that your objection to the proposed junction point suggested by the A. & V. Railroad two and a half or two miles east of Curran's Crossing, was that the A. & V. Railroad division on traffic would be thin and they couldn't afford to give the J. & E. Railroad a division out of their division which would permit the J. & E. to live. Did I correctly understand you?

A. You did.

Q. Have you any reason to believe that the A. & V. Railroad's division would be any different at the junction you propose at Curran's Crossing than at this one two and a half or two miles east of Curran's Crossing?

A. There would be a difference in the way it was handled, here it will be handled by a switch movement.

Q. Have you made any application to the A. & V. Railroad for the handling of traffic from Curran's Crossing on a switching movement?

A. I don't have to.

Q. I simply asked you if you had?

A. I have not, and I don't have to.

Q. You sat here and heard the objections made by Mr. Ford and other A. & V. witnesses to handling it on a switching movement?

A. Yes, sir.

[fol. 961] Q. And if I understand you, your desire to go to Curran's Crossing for a junction is predicated on the thought that if you get there you will be able to get a switch movement over the A. & V.?

A. I know it.

Q. From whom will you get this switch movement?

A. From the authorities that control both the A. & V. and the J. & E., the Interstate Commerce Commission.

Q. If you are unable to get the Interstate Commerce Commission to grant you a switching movement out of Curran's Crossing the main difference, from your point of view, between Curran's Crossing as a junction and the junction point suggested by the A. & V. will be eliminated?

A. Absolutely, as a defense only.

Q. What objection would you still have to the A. & V. junction as opposing the Curran's Crossing junction, if in neither case you could secure a switching movement?

A. All of that part of the line from Liberty Church to the A. & V. Railroad at Pearson would be a dead loss on the future development of the road. In other words, the road must go to Jackson ultimately to be a success, and if I was compelled to build 10 or 12 miles from the present location to the A. & V. Railroad at Pearsons, that link would ultimately be a dead loss, and would have to be taken up and abandoned.

Q. You say that your line must ultimately go to Jackson?

A. To be a permanent success.

Q. Do you mean that your line must go to Jackson or just close to Jackson?

A. No.

[fol. 962] Q. What do you mean?

A. I mean that any line, that under the present law policy governing the consolidation and building of carriers, to make the line a permanent success it must go into Jackson to make connections with other lines.

Q. It must go into Jackson, how, on its own rails?

A. No, sir.

Q. How?

A. Either go in on its own rails or the joint rails of other carriers.

Q. What other carriers?

A. The A. & V.

Q. Then, it is your testimony is that your line cannot be a permanent success unless it is granted the use of the facilities of the A. & V.?

A. Not that, it could go in on its own rails.

Q. I asked you if it was going in on its own rails?

A. I don't know.

Q. Didn't you twice say it couldn't go in on its own rails?

A. I didn't say so.

Q. If you go in on your own rails, where will you go?

A. I don't know. I have no authority to build in any other way.

Q. Have you made any plans to go in on your own rails?

A. No, sir.

Q. Have you made any plans to go in on the rails of the A. & V.

A. I have tried to.

Q. What terminals do you propose to use if you went in on the A. & V. rails?

[fol. 963] A. I first considered using the N. O. G. N. line or the

A. & V. terminals.

Q. Why do you not propose to go across the River directly and build your own bridge and terminals?

A. In the first place I have no authority from the Interstate Commerce Commission to do that, and in the second place it would be a financial impossibility for me to do it.

Q. You mean that the cost of the bridge and the cost of the terminals would be financially prohibitive?

A. Yes, sir, and the financial operations inside would be impossible.

Q. As I understand you by being financially impossible, you mean that if you build a bridge and acquire terminals in Jackson that the interest charges on that investment would be so heavy that your road couldn't stand it?

A. Yes, sir. The J. & E. Railroad is only 75 miles long and a road that length couldn't undertake a program that would be involved in such a proposition as outlined by you.

Q. Then you propose to use the costly bridge and the costly terminals of the A. & V.?

A. I am not proposing to do that now. I did originally, but not now.

Q. You will later on have your own bridge or else use the bridge and terminals of some other carrier?

A. Yes, sir.

Q. You say that to build your own bridge and terminals is a financial impossibility?

[fol. 964] A. For the J. & E. under the present situations.

Q. Then you propose to use, if you go into Jackson, the bridge and terminals of the A. & V.?

A. I don't propose to do it now.

Q. But if you don't build your own bridge and terminals, and you go into Jackson, you will have to use those or some other carrier?

A. I am not going into Jackson at this time, that is indefinite. I don't know anything about the result of it.

Q. You have said that you were going into Jackson?

A. Ultimately.

Q. You will have to, if it is a permanent success?

Mr. Stone: We object to this line of testimony, the question before Your Honor is whether or not this is a feasible point of junction, and not whether it is more feasible or less feasible than some other point.

The Court: I think the testimony is competent.

Mr. Stone: We except to the ruling of the Court.

Q. You said that?

A. Yes, sir.

Q. You said also, that to go into Jackson you would go in over your own bridge and terminals, or else over the bridge and terminals of another carrier?

A. I did.

Q. You also said that it would be a financial impossibility for you to build your own bridge and terminals, did you not?

Mr. Stone: We object to him making those statements in the record. He said under the present condition of the railroad.
[fol. 965] The Court: You are right.

Q. Under the present conditions?

A. That's right.

Q. Now, Mr. Neville, if you use the bridge and terminals of another carrier would you propose to use it free of charge, or to pay a proper compensation to the carrier for the use of it?

A. That operation is under the control of the Transportation Act and the Interstate Commerce Commission, and I would have no more to do with it than the A. & V.

Q. I asked you the question, would you propose to use the bridge and terminals of another carrier without paying them for it?

A. Do you want me to tell you.

Q. What do you propose to do?

A. The law is where—to avoid duplicate facilities at terminals that one carrier be permitted to use and operate the main line track to go into terminals of other carriers, use them jointly, and where carriers can not agree between themselves for the joint rental on the property the Interstate Commerce Commission has authority to value the property and assess each road with its prorata share of the operations.

Q. Then your conception of it is to pay the proper compensation to the A. & V. for the use of its terminals is on a basis of joint use, for instance if the Interstate Commerce Commission holds that the A. and V. facilities jointly are valued at 200,000.00 Dollars, six per cent of that would be \$12,000.00, to be divided between the A. & V. and the J. & E.?

A. On a basis that if the A. & V. was 80 per cent and the J. & E. 20 per cent, the A. & V. would get 80 per cent and the J. and E. 20%.
[fol. 966] Q. Would your operating cost for the use of the bridge and terminals, according to your theory be less than building your own bridge and terminals?

A. Unquestionably.

Q. Why?

A. Because they would be jointly used.

Q. It would be less because of the through traffic the A. & V. Railroad would be giving to you?

A. No, sir, not at all.

Q. The total cost would be divided on the basis of a pro rata basis?

A. Yes, sir.

Q. Then, your proposition to this, is, that in order that you be able to live it is necessary for the A. & V. Railroad should be required to permit you the use of its bridge and terminals?

A. That has nothing to do with it. I have made no such proposition to this Court.

Q. What is the difference between that proposition and the one you have made?

A. I made no such proposition, I am seeking a physical connection.

Q. You said that you can't live unless you get the benefit of the bridge and terminals of some other carrier?

A. I have not.

Q. You said that you couldn't live?

A. As the J. & E. is presently situated.

Q. Then you said the J. & E. under the present situation can't live unless it gets into Jackson in partnership with some other carrier? [fol. 967]

Mr. Stone: We object to him making those statements in the record.

The Court: I understand that Mr. Monroe has deduced from the fact that he said those results, I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. I said in my testimony that the J. & E. Railway constructed its line from Union, Mississippi, to Curran's Crossing, and that operation it can be operated successfully for a number of years or until such time as the traffic it originated begins to disappear. At that time it will be necessary to depend on other business to be a permanent success, permanently sustained. It then, in the future must necessarily go into Jackson and become connected there with other carriers.

Q. You said, did you not, that it would not be financially feasible for the J. & E. to build its own bridge and its own terminals?

A. At this time.

Q. And you said that it would be necessary for the permanent success of the J. & E. for it to go into Jackson, did you not?

A. Yes, sir.

Q. You said that in order to make it a permanent success it would have to go into Jackson either on its own bridge and terminals or on the bridge and terminals of some other carrier?

A. I did.

Q. Then, isn't it a fact that you have testified that it can't live on its own bridge and terminals, and necessarily it will have to depend on the bridge and terminals of some other carrier?

[fol. 968] A. I testified that it would not be necessary to do so for a number of years.

Q. Now, Mr. Neville, do you say in your testimony at the expiration of a number of years that the J. & E. to get to Jackson will have to go on another carrier's line?

A. My opinion is that with the progress of railroad legislation that all these things will be under the control of the Interstate Commerce Commission, or by the Government, the future disposition of railroads, what their disposition will be, and I laid my plans to accord with what I thought would be the future plan of the Government of railroad operations.

Q. You said, I believe, that it was not necessary for the J. & E. to go into Jackson on the line of another carrier for a number of years?

A. It is not necessary, but it is desirable, more desirable.

Q. Did you make an application to the Interstate Commerce Commission on behalf of the J. & E. to go into Jackson?

A. I did.

Q. On the line of the A. & V.?

A. I did.

Q. Then, you were applying for something that was not necessary at this time?

A. No, it was an aid in my financial arrangements.

Q. But it was not necessary at this time?

A. It was not absolutely necessary.

Q. When do you expect it to be necessary?

A. In a number of year-

Q. What number of year-, one, five, 10 or 20?

[fol. 969] A. I would say that it could go on for a number of year-, say 10 years.

Q. Now, you testified that in order to live, you would have to get a junction with two south lines in Jackson, and you gave the name of the G. & S. I. and the N. O. & G. N.?

A. Yes, sir.

Q. Has the G. & S. I. a bridge across Pearl River?

A. Yes, sir.

Q. That bridge is about how far from the A. & V. bridge?

A. My understanding it is several miles.

Q. Several miles?

A. Yes, sir.

Q. Mr. Neville, can't you see one from the other?

A. I have never seen it in my life.

Q. You have never seen it?

A. No, sir.

Q. Give your best judgment as to the distance?

A. My best judgment is that it is several miles.

Q. Has the G. & S. I. terminal facilities in Jackson?

A. Yes, sir.

Q. Now, Mr. Neville, if your purpose in going to Jackson is to make a connection with the G. & S. I., when you made a junction would you compete with business with other lines?

A. I would get all the business that I could.

Q. Would you compete with the A. & V.?

A. I don't understand, I understand that the A. & V. is a west and east line and I propose to develop a north and south line.
[fol. 970] Q. If your line should make a connection with the M. & M. wouldn't it run from Jackson to Meridian?

A. Yes, sir.

Q. And that is where the A. & V. runs?

A. Yes, sir.

Q. You would have two lines between the same two points?

A. Yes, sir.

Q. Would these compete in any respect?

A. Well, in the two lines, the distinction would be that one would be eight or 10 miles longer, and one would be a two line haul and the A. & V. line is a one line haul.

Q. Mr. Neville, if it is your purpose to make a junction with the G. & S. I. why don't you get that connection with the G. & S. I. and go in over their bridge and terminals?

A. I would have the same trouble if I wanted to cross the A. & V. to get to them.

Q. Is that the only reason?

A. No, sir, it is not.

Q. What is the other reason?

A. Because in that event I would have to go south and then turn and go back north, and under the rules of the Transportation Act I don't think it would be permitted.

Q. I am not asking you as to the law?

A. I have to regard the law when making my plans.

Q. Have you ever applied to the A. & V. to cross their line to go to the G. and S. I.?

A. No, sir.

Q. Have you ever inspected on the ground the proposed junction [fol. 971] suggested by the A. & V.?

A. Yes.

Q. On the ground?

A. No.

Q. You have never taken the trouble to go and inspect this proposed junction?

A. It is so ridiculous I wouldn't take the trouble.

Q. Now, I understood you to state yesterday to your counsel, that you had received this letter Exhibit "T", from Mr. Jones, on or about the date of September 30, 1921?

A. I did.

Q. And I understood you to state that at the time you had not paid out any money on these right of way deeds, one from Mr. and Mrs. C. J. Tanner, \$369.03; and one from James Hurst, \$108.70, and one from Mr. and Mrs. Cox \$157.84, being the only three right of ways for which a consideration of more than \$1.00 was paid?

A. I had not paid the money, but I had contracts covering them.

Q. You didn't pay the money on these contracts until the date of these deeds, which was in November, 1921?

A. According to the date on my contracts, but not according to the deeds.

Q. Your contracts were not binding?

A. I was afraid I would lose the right of way.

Q. In other words you had an option on the land and you exercised that option after Mr. Jones notified you that the proposed point of junction was objectionable, and suggested a point at or near Pearson?

A. It was either to do that or let the options expire.

[fol. 972] Q. You testified yesterday that you knew that you could get a right of way donated to you by going directly across the bottom to get into Jackson over the line A-B?

A. Yes, to the River. Nearer the end it is impossible.

Q. You could, also, no doubt, be able to get a right of way down to the point as suggested by the A. & V.?

A. No doubt.

Q. And you could no doubt, get it without substantial cost?

A. The cost would not be material.

Q. So that, Mr. Neville, at the time you took up these options you knew that the A. & V. was objecting to this proposed point of connection at Curran's Crossing on the ground that it was a dangerous and impractical place?

A. I knew that, and I knew also, the rule of the Interstate Commerce Commission on building railroads—

Mr. Monroe: We move to strike out anything about the Interstate Commerce Commission, first on the ground that it is not responsive to the question, and second, it is an attempt to show a ruling of the Interstate Commerce Commission by oral proof, when the only proper evidence is the rule itself.

The Court: I sustain the objection.

Q. Mr. Neville, is it not a fact that you are having negotiations with Hinds and Rankin Counties, or with the City of Jackson, or with the citizens of Jackson for the building of a line of railroad substantially along the line A-B that I have indicated to you, and for the building of a separate bridge across Pearl River, permitting the J. & E. to go into Jackson?

[fol. 973] Mr. Stone: We object to counsel asking the question, as to what negotiations this defendant has had.

The Court: The only thing involved as to the road across the River above is whether or not it is practical, and I don't think the negotiations with the people of Jackson would have anything to do with —.

Q. Mr. Neville, isn't it a fact that the Highway Commissioners of Hinds and Rankin County and yourself now have under consideration the proposition of going straight across Pearl River bottom along substantially the line A-B, building a highway and J. & E. Bridge across Pearl River and going into Jackson?

Mr. Stone: We object, it is the same question.

The Court: I can't see that it has any bearing on this question.

A. Absolutely and positively not. I was called to Jackson at one

time to discuss with them, but I told them that I couldn't undertake that or go into it with them at this time. They wanted to discuss it with me.

Q. That suggestion was made to you by whom?

A. By an officer of the Merchants Bank & Trust Company. I think the A. & V. does business with them in Jackson.

Q. Who else was present?

A. The highway commissioners.

Q. Of what county?

A. And the Board of Supervisors were there. And I think one of your directors was there.

Q. And the suggestion was made to go across there and go on this bridge into Jackson?

A. Yes, sir.

[fol. 974] Q. And your answer to that was that you had rather come down here and cross on the A. & V. bridge?

A. It was not.

Q. What was your answer?

A. That I would carry out my original plans, and get a connection with the A. & V. at Curran's Crossing.

Q. Your answer was that you were going on to Curran's Crossing and try to get into Jackson over the A. & V.?

A. No, sir, it was not.

Q. At any rate the objection to that suggestion came from you?

A. Absolutely.

Mr. Stone: We object to that as being incompetent, irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Q. Do you expect any interstate traffic on your road?

A. I do.

Q. You stated that if you built your line down to Pearson that that line would be an economic waste if you went into Jackson?

A. It would be necessarily, yes, sir.

Q. If you ultimately use the main line and the terminals of the A. & V. Railroad you could use that main line and terminals from the connection to the west of Pearson with practically the same facilities that you could in using the main line and terminals facilities from Curran's Crossing junction, could you not?

A. I couldn't force, the Interstate Commerce Commission wouldn't have authority to enforce an operation from Pearson to Jackson. That would be using the main line from one station to another station.

[fol. 975] Q. Then, the real bug under the chip, Mr. Neville, is that you think if you get to Curran's Crossing you can get an advantage over the A. & V. which you couldn't get if you went to Pearson, is that right?

A. I am not familiar with any bug under a chip. I am acting under my authority from the Interstate Commerce Commission.

Q. Then, Mr. Neville, the real motive in your desire to go to

Curran's Crossing as a junction is you think you can force the A. & V. to handle your traffic on a switch movement at that point, and you don't think you can force them to handle your traffic on such a movement, if you were to go to the junction *suggested* by the A. & V.?

A. I think that in getting a connection at Curran's Crossing, that I am not only conforming to the state law, but to the international law, as to railroad operations and railroad locations, and I am trying to get the line located in line with the policy of the Interstate Commerce Commission.

Mr. Monroe: We submit that he has not answered the question.
The Court: I think he should answer it a bit more definitely.

A. By my connection with the A. & V. Railroad I don't expect to get any physical situation that will enable me to do anything with the A. & V. that is not in strict conformity with both the state and the International law. I can't force you to do anything.

Q. I ask you again, isn't it a fact that the reason you want a junction at Curran's Crossing, you think you can force the A. & V. to handle your traffic on a switching movement there, and you don't think you could force the A. & V. to handle it on a switching movement at a junction at or near Pearson?

A. I think it is a fact.

[fol. 976] Q. I believe you stated that you expected some interstate traffic on your road?

A. I do.

Q. Do you expect any business in car load lots?

A. I do.

Q. Would it be feasible and practical to unload a carload of business and handle it by truck into Jackson, and re-load it there?

A. It would not.

Q. What proportion of your business do you expect to be in car-load lots?

A. I would say 80 per cent of it.

Q. And that car load lot business, you say, couldn't be handled feasibly by truck?

A. No.

Q. Then, that business that moved by the J. & E. to the junction point north would go by the A. & V. Rails into Jackson, or beyond the city or wherever it was destined?

A. Absolutely.

Q. Then, as far as that business is concerned the only difference between the junction point two and a half or two miles west of Curran's Crossing and Curran's Crossing is the two and a half miles?

A. No.

Q. What would be the other difference?

A. If I went to Jackson I would have to arbitrate on my line, and if I went to Curran's Crossing the freight would be handled on a switch movement. If I went to Pearson they would participate in my freight rates, through rates.

Q. Then you went to go to Curran's Crossing to get an advance [fol. 977] tage over the A. & V. and exclude them from participating in through freight rates?

A. To avoid the high rate for the shippers on my line.

Q. You want to exclude the A. & V. from participating in the through rate?

A. They would still have the same rates as the I. C. They would get so much and no more if I go to Jackson on a switching movement, they would have the same right to handle the business as the I. C. I can't discriminate against carriers.

Q. You propose to exclude the A. & V. from the through freight rate?

A. No.

Q. At the proposed junction at Curran's Crossing, do you propose for the A. & V. to get a portion of the freight rate on business which moves from your line at Curran's Crossing, from Curran's Crossing over the A. & V. to the I. C., then by the I. C., would the A. & V. get a portion of that freight rate?

A. If it moved to the I. C. it would not, if it moved over the A. & V. it would.

Q. If shipments went to Jackson from the junction as proposed near Pearson, on the J. & E. to that junction, then from the junction on the A. & V. to Jackson, and then on the I. C., would the A. & V. get a portion of the freight rate?

A. Yes, sir.

Q. Then, your object would be in going to Curran's Crossing would be to exclude the A. & V. Railroad of that class of business, participating in through rates, restrict the A. & V. to a switching charge?

A. May I ask you a question?

[fol. 978] Q. No, answer my question?

A. I don't consider that I am undertaking to take any more advantage of them than the A. & V. is in objecting to me making this physical connection at Curran's Crossing and trying to force me to go to Pearson.

Q. Mr. Neville, answer my question, isn't it a fact that you are seeking to exclude the A. & V. Railroad from participating in through rates on business moving from J. & E. points into Jackson and over the I. C.?

A. My plan is—

Q. Answer my question.

Mr. Neville: We submit that he should be allowed to answer it.
The Court: I can't understand why the question is necessary.

Q. Mr. Neville, have you made any plans for interchange tracks at the proposed point of junction at Curran's Crossing?

A. The plans have not been reduced to maps. I know just how they are going to be fixed.

Q. They are in your own head still?

A. Yes, sir.

Q. They haven't been put on paper at all?

A. No, sir.

Q. Have you made any plans as to how you propose to handle the express and mail at Curran's Crossing?

A. I know what I expect to do.

Q. But your plans are in your head and not on paper?

A. No, sir.

Q. Is there at present any station on the A. & V. at Curran's [fol. 979] Crossing?

A. There is not.

Q. With what road would this J. & E. connect on the east?

A. The G. M. & N.

Q. Where is that?

A. At Union.

Q. In the state of Mississippi?

A. Yes, sir.

Q. You propose to connect at Jackson you stated with the N. O. & G. N.

A. With the A. & V.

Q. But you stated that you proposed to form a through line?

A. Yes, sir.

Q. You would have no chance to live unless you get a through line?

A. Ultimately.

Q. You are aware of the fact, are you not, that in delegating roads into systems, the Interstate Commerce Commission has delegated the Southern Railway, the N. O. & G. N., and the G. M. & N. to the I. C.

A. The G. M. & N. to the L. & N.

Q. The G. M. & N. to the L. & N.?

A. Yes, sir.

Q. And the N. O. & G. N. to the Southern?

A. Yes, sir.

Q. Then, Mr. Neville, in that case your ultimate through line would be the L. & N. on one side and the Southern Railway on the other?

[fol. 980] A. I think that is subject to revision.

Q. Either your plan won't hold or else the plan of the Interstate Commerce Commission won't hold?

A. My plan has been approved by the Interstate Commerce Commission.

Q. There are no other plan?

A. No definite plan has been adopted.

Q. Do you mean to leave the impression on this record that the Interstate Commerce Commission has approved your plan to the extent of overruling their proposed combination?

A. They are just having a hearing now on this suggestion of a combination.

Q. Have you estimated the cost of building your road to Curran's Crossing?

A. Yes, sir.

Q. What was the estimated cost?

Mr. Stone: We object, as this has nothing to do with whether or not Curran's Crossing is a feasible junction.

The Court: I think it is proper.

A. About Ten Thousand Dollars a mile.

Q. Ten Thousand Dollars per mile?

A. Yes, sir.

Q. What was the estimated total cost from Sebastopol?

A. \$750,000.00. No, I thought you asked me from Union, that is the estimated cost from Union, from Sebastopol, \$600,000.00.

Q. Have you any financial arrangements for building that line?

A. I did have.

Q. You have none at present?

A. No, sir.

[fol. 981] Q. You are prohibited, are you not from selling bonds on the line for the purpose of building the line into Jackson?

A. No, sir.

Q. You are not prohibited from selling bonds at present?

A. I was originally, the original application—do you want me to testify about the application?

Q. I want to know if you are not prohibited from selling bonds on the line for a period of five years?

A. Not, now.

Q. Do you mean you have an amendment to the order of the Interstate Commerce Commission?

A. Yes, sir.

Q. Will you produce it?

A. I have nothing but a copy.

Q. Will you produce the copy?

A. I tried to.

Q. The original order expressly prohibited you from issuing bonds?

A. May I testify as to the original order?

Mr. Monroe: Let's see the original order that you have in here, Mr. Stone?

Mr. Monroe: In connection with the testimony of the witness we offer, certified copy to be produced, the original application to the Interstate Commerce Commission, dated July 12, 1921.

The Court: Is it certified?

Mr. Monroe: Certified copy to be produced.

Witness: Do you want me to explain about that?

[fol. 982] Mr. Monroe: I offer also, certified copy to be produced, the report of the Interstate Commerce Commission, dated July 1921.

[fol. 983] Q. Now, Mr. Neville, you stated you had financial arrangements for the financing of this road, you have, in the presence of the witness, is or is it not a fact that this financial arrangement was expressly predicated upon the following condition, namely, that you should obtain from the A. & V. Railroad a right of way into Jackson, a right to enter Jackson by valid order of the Interstate Commerce Commission?

Commerce Commission, to have arrangements for terminals in the City of Jackson, or should have secured from the A. & V. Railroad such arrangements, and arrangements for the use of the N. O. & G. N. terminals?

Mr. Stone: We object, if it is in writing.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Q. Is that true?

A. I had \$93,000.00 in bonds nearly sold on that condition.

Q. Was that a part of the financial arrangements?

A. Yes, sir.

Q. Was it a necessary or unnecessary part?

A. It was at that time a necessary part.

Q. Have you now replaced the \$93,000.00 in bonds?

A. This injunction broke all that up.

Q. Are you now prepared to finance this operation?

A. I can't answer that on the stand.

Q. Why?

A. Because I don't know.

Q. Then, you don't know whether you can get the finances to complete the project if the junction is granted you, is that correct?

A. I think I can carry out my plans.

[fol. 984] Q. Have you any definite financial arrangements?

A. I will complete the road if you all will turn me a loose.

Q. You said that you had already constructed to Walnut Grove?

A. Yes, sir.

Q. That is your closest point?

A. Yes, sir.

Q. And what is the distance from Walnut Grove, approximately?

A. 50 miles.

Q. I ask you now, if you have any definite financial arrangements to build from Walnut Grove to Curran's Crossing?

A. But not on such favorable conditions as I had the other time, but I have.

Q. I asked you if you had any definite financial arrangements to build?

A. I will build the road, but I have no contract.

Q. I ask you again if you now have definite financial arrangements for the building of the road from Walnut Grove to Curran's Crossing?

A. No, sir, the injunction of the A. & V. broke up the financial arrangements I had for building this road.

Q. You stated that you had \$93,000.00 in bonds?

A. Yes, sir.

Q. But that condition was that you would either get the consent of the A. & V. for the use of their main line and terminals or the use of the terminals of the N. O. & G. N.?

A. Yes, get a valid order from the Interstate Commerce Commission authorizing me to do that.

Q. That was with reference to the \$93,000.00?

A. Yes, sir.

[fol. 985] Q. Have you got a valid order from the Interstate Commerce Commission authorizing you to use the main line of the A. & V. into Jackson?

A. I so construe it.

Q. What order do you refer to?

A. That part of the testimony in here——

Q. To which order?

A. The order, Finance Docket Number 9. Which is the result of the testimony taken at the time.

Q. Was there filed by you a petition in the Finance Docket?

A. I have got that with me.

Q. Was that filed prior or subsequent to the filing by you of the application dated December 10, 1921? Exhibit "D".

A. Prior.

Q. Did you file the application marked Exhibit "D"?.

A. Is this Exhibit "D"?

Q. Yes?

A. Yes, sir.

Q. I notice in your prior application, Exhibit "D" you state, wherefore this applicant prays for an order from the Interstate Commerce Commission directing and requiring a physical connection on the part of this applicant with the main line of the said A. & V. Railway Company at a point above described east of Pearl River, and also authorizing and directing and requiring the said Alabama & Vicksburg Railway Company to grant to this applicant the right to use that portion of the main line of the said Alabama & Vicksburg Railway Company between these two points above described for the purpose of running its engines, trains and cars over said portion of said main line of the said Alabama & Vicksburg Railway from said [fol. 986] point of connection east of Pearl River to the said point on Commerce Street west of Pearl River in the City of Jackson, Mississippi, and compensation charges which the applicant should pay to the Alabama & Vicksburg Railway Company for said physical connection above mentioned and the use of the main line be fixed by the Interstate Commerce Commission in order that a Certificate of Public Convenience and Necessity may be made effective by this applicant?

A. That is exactly it.

Q. If you believed that you already had a right to use the main line of the Alabama & Vicksburg Railroad Company under the order in Finance Docket Number Nine why did you subsequently file a petition in the proceedings 13361 praying for such a right?

A. For the reason I wanted to make it more effective. What had been previously decided was not recognized by the A. & V.

Q. Mr. Neville, you introduced in connection with your testimony a letter from the Interstate Commerce Commission, Exhibit "4", I believe, will you let me see that Exhibit?

A. I think I have it.

Q. This letter was written to you in connection with this application 13361?

A. It was.

Q. With this statement of facts before you in paragraph 4, Section 3, over the Commission's Secretary's Signature, do you still undertake to leave the impression on this record that the Commission's has jurisdiction to grant the relief prayed for, has taken the jurisdiction giving you the authority to utilize the main line track of the [fol. 897] A. & V. Right of way from Curran's Crossing into Jackson?

A. I certainly do not take any such position.

Q. How do you make that last answer consistent with your former answer?

A. I thought the certificate of public convenience and necessity settled the whole thing. I thought there was just a little detail to be cleared out.

Q. And that little detail is still there?

A. If I ever decide to resume the proposition a new application will have to be filed. The whole thing is dead as it now is.

Q. Have you been given an extension of time for the building of the J. & E.?

A. I have.

Q. What time?

A. December 31, 1925. Do you want to see it?

Q. No. You stated, I believe that a junction point was an added danger to railroad operations?

A. Every increased operation anywhere whether at a junction point or on the main line.

Q. I just asked you, is or is not every junction point an increased danger in railroad operation, just answer that, yes or no?

Mr. Neville: He has the right to explain.

The Court: Answer that if you can.

A. Every junction point that is made relative increases the operations and every increased operation increases the danger.

Q. Is that a danger to the trains passing there?

A. That depends on whether there is a joint use.
[fol. 988] Q. It does mean an increased danger?

A. If there is no joint use there is no increased danger to the trains passing there.

Q. Then you are going to qualify your original statement and say that a junction point is not an added danger unless there is a joint use at the junction point?

A. I am going to let my original statement stand.

Q. You stated that every junction point with a railroad means an increased danger?

A. A junction point does not increase the danger to through trains unless there is a joint use of the line.

Q. In other words, then if the J. & E. had a junction point at Curran's Crossing, there would be no danger to through trains going through there from the passing of the J. & E. cars by the A. & V. trains, that would be standing or otherwise going out on the A. & V. track?

A. Absolutely not because it is up hill. You can't run cars up hill with any speed.

Q. You could run them up with power?

A. Yes.

Q. And if you did run them up?

A. There is an inter lock there.

Q. These cars to make the interchange would come in from the switch?

A. Yes.

Q. If it happens that a car in coming in from the switch that movement would be a menace to a through train coming by that junction, if the switching movement was going on at this time?

A. The same menace there as at any other point, Pearson or any [fol. 989] other point of junction.

Q. There would be a danger to that train at that particular point?

A. In the manner which you described.

Q. I hand you a document marked "C", being a certified copy of the bill introduced in the Legislature, which I believe you said you introduced. Is that a copy of the bill?

A. It is.

Q. Why did you introduce that bill in the Legislature?

A. That is a duplicate of the Transportation Act with reference to the same subject. In the event, I knew at that time the A. & V. was going to fight it, and in the event there was any hitch in it, in the National Law I wanted the state to have the same authority.

— You thought the state wouldn't have the authority without the introduction of the bill?

A. I don't know, I wanted to be safe.

Q. You were so advised that the state would not have the authority?

A. No, sir.

Q. Was this bill drafted by you or your lawyers?

A. Together.

Q. It was killed?

A. The A. & V. was there. Do you want me to tell you about it?

Q. No. I am not interested in that. In this Finance Docket Number Nine, how many in there?

A. I think there were several.

Q. You only introduced one here?

A. There was one.

[fol. 990] Q. I ask you to produce all the orders in that finance Docket, Number Nine?

A. I haven't certified copies.

Q. Will you produce copies of all the orders you have?

A. I will be glad to.

Q. I want particularly copy of the order you say you have permitting you to sell bonds against that line of railroad?

A. Yes, sir.

Q. You made some statement concerning a notice to the A. & V. Railroad of the hearing in Finance Docket Number Nine. Have you a copy of that notice?

A. I will have a certified copy tomorrow.

Q. I would like for you to produce those copies of the orders in the Finance Docket Number Nine during the noon recess?

A. Yes, sir.

Q. What is now being done in the matter of construction work on the J. & E. Railroad between Walnut Grove and Curran's Crossing?

A. Nothing.

Q. When was the last construction work done on that line?

A. During last year.

Q. What year?

A. 1923.

Q. What month in 1923?

A. I don't know, we put in the Walnut Grove operations in the spring.

Q. I didn't ask you about Walnut Grove, I asked you between Walnut Grove and Curran's Crossing?

A. We made it the same time, started on the line from Walnut [fol. 991] Grove to Tuscola.

Q. When?

A. That was in December or November.

Q. Of 1923?

A. Yes, sir.

Q. No work is being done now at all?

A. No, sir.

Q. What work was done in November or December?

A. Clearing the right of way.

Q. Has any work been done between Tuscola and Curran's Crossing in the year 1923?

A. No, sir.

Q. In 1922?

A. No, sir—yes, sir.

Q. What did you do in 1922?

A. I don't recall. I would have to look at my records to see.

Q. What was the date in 1922?

A. I don't recall.

Q. How far is Tuscola from the junction at Curran's Crossing?

A. 45 miles.

Q. Is Curran's Crossing at present in the switching limits of Jackson, Mississippi?

A. It is not in the yards.

Q. Is it in the present switching limits?

A. I don't know whether they do any switching out there or not.

Q. You know it is not in the yard limits?

A. Yes, sir. I know that.

Q. When, where and with whom did you ever discuss any division of rates with the A. & V.?

[fol. 992] A. Mr. Jones.

Q. Was any figures on the division made either by him or by you?

A. No, he gave me to understand at once there was no possibility of such a thing.

Q. You didn't discuss any figures?

A. Well, we discussed—I submitted to him a proposition of making traffic relations, and opened a discussion on the division of through rates, and he told me there was no possibility of anything like that.

Q. In other words, you talked about general traffic conditions, and didn't go into any discussion, hold any conference on the division of rates?

A. That is what I tried to do, but he refused.

Q. Did you submit a schedule to him?

A. No.

Q. And he submitted none to you?

A. No.

Q. So you didn't discuss any division of rates?

A. I undertook to do so, but he told me it couldn't be done.

Q. He refused to discuss it with you?

A. He said it was impractical and there was no use to do it.

Q. You didn't draw up any schedule of the division of rates?

A. I opened the discussion and he told me that it was impractical.

Q. Have you ever made a written statement to the Interstate Commerce Commission as to what terminals you propose to use in Jackson?

A. I testified—

Q. I am not asking you what you testified?

A. Well in my application, I stated that I wanted to use the [fol. 993] terminals of the N. O. & G. N.

Q. How were you going to get over there?

A. Either over the line of the A. & V. or build an independent line into Jackson.

Q. Have you any financial arrangements for building an independent bridge into Jackson?

A. No, sir, I have not.

Mr. Monroe: I have no further question that I want to ask until I get the documents that I have asked for. I reserve my right to further cross examine him at that time.

Redirect examination by Mr. Stone, for the defendant.

Q. Mr. Monroe, ask you a number of questions about an ideal location, that is if you had the chance of connecting at one point or at another point. I will ask you whether or not all railroads strive to get the ideal in building their railroads?

A. Yes, it is the purpose of all railroads.

Q. Is the ideal practical in railroads?

A. Very seldom. I have never known a place where the ideal is 100 per cent. proposition was possible. There are more or less difficulties at terminals and any where else, but all railroads put up with them.

Q. You have got to do the best you can under the circumstances.

A. Yes, sir, got to reach an objective.

Q. Mr. Neville, Mr. Monroe also asked you if you had any neg-

tiations with the N. O. & G. N. and if a connection could be made with them by crossing north and going into Jackson at the Old Capitol. Has the N. O. G. N. any railroad track up there?

A. Only a right of way, that is what they own back of the Old Capitol.

Q. There is no railroad there at all?

[fol. 994] A. They go into Jackson over the tracks of the I. C. Railroad.

Q. How far is this point from the right of way back of the Old Capitol?

A. About five miles. Four miles from the northern end of it, down to Nogan where they join it.

Q. You say the N. O. G. N. goes in over the I. C.?

A. Yes.

Q. How long have they been doing that?

A. Ever since it was built.

Q. What kind and character of road is the I. C. with respect to volume?

Mr. Monroe: We object to the question as being incompetent, irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Compared with the A. & V.?

Mr. Monroe: It is understood that we made the same objection to all of this line of testimony, with the same ruling by the Court, and with our same exceptions to His ruling.

A. The class of the road is the highest in the south. It does the most business.

Q. You have referred to certain hearings before the Interstate Commerce Commission. Can you approximate the dates of those hearings?

A. The first hearing was the third day of August, 1920, and the second the 13th day of December, 1920.

Q. Was that before or after you got the communication from Mr. Jones, President of the A. & V. objecting to the junction at Curran's [fol. 995] Crossing?

A. The first hearing was over a year prior, and the second hearing 11 months prior.

Q. Mr. Neville, a number of deeds, transcripts of some deeds has been introduced in evidence as Exhibit "25" to your testimony. What part of the right of way of your road do these deeds cover?

A. In what county?

Q. In Rankin County? I will ask you to state to the Court whether or not they cover the entire right of way from Liberty Church, or a point near Liberty Church?

A. They do.

Q. How much of it?

A. Practically all of it.

Mr. Monroe: We object that it is an attempt to vary the written instrument by oral testimony.

Q. How much of the right of way between Liberty Church and Curran's Crossing has not been procured?

A. I have an agreement for all of it but one small part—.

Mr. Monroe: We object to any testimony as to any agreement.

The Court: I think the contract is better.

Q. What part of the right of way between Liberty Church and Curran's Crossing is not covered by the transcript of these deeds introduced?

A. About two miles.

Q. How far is it from Liberty Church to Curran's Crossing?

A. I declare I don't know.

Q. Approximately how far?

A. My understanding is that it is 15 or 20 miles.

Q. You stated that you had it all but about two miles between Curran's Crossing and Liberty Church. I will ask you to state what [fol. 996] part of it you have not secured from Curran's Crossing back for 20 miles?

A. All except two miles.

Mr. Monroe:

Q. I don't like to interrupt you, but how far did you say it was from Curran's Crossing to Liberty Church?

A. I said I didn't know.

Q. Will you look at this map and see how far it is?

A. The map shows between six and eight miles.

Q. What part of the right of way has been secured by you within this six or eight miles?

A. Most of it not a great distance from Jackson, except the scope.

Q. Where is the scope you speak of?

A. Beginning at Curran's Crossing and going north.

By Mr. Stone:

Q. We object to Mr. Monroe asking his questions now. What part of this two miles that we have been talking about is between the concrete highway and Curran's Crossing?

A. I have all of that covered by contract.

Mr. Monroe: We make the same objection. The only evidence to the title to real estate is the deed.

The Court: I sustain the objection.

Q. Has it been closed?

A. The deeds and contract.

Q. Have the deeds been introduced?

A. Yes, sir, the contracts have not.

Q. Now, Mr. Monroe asked you at length about your efforts to get the use of the A. & V. terminals I want to ask you one question about that, and that is, whether or not your efforts to get the use of [fol. 997] the A. & V. terminals was prior to or subsequent to the filing of your eminent domain suit?

A. Prior to.

Q. You were also asked if you know about the conditions at the proposed junction near Pearson, and you said, as I remember, that you did not. Have you been down there to investigate that point?

A. No, sir.

Q. What familiarity have you, if any with the territory at this proposed junction?

A. The whole territory.

Q. Are you familiar with it?

A. Yes, sir.

Q. You were asked a number of questions about your purpose in getting this junction near Curran's Crossing, and also were asked if it was not a fact that you wanted to get there because you could make switching arrangements. I will ask you whether or not that is your only reason in wanting to go to that junction?

A. No.

Q. You were asked about the continuation of the work on your road and why the work has stopped on your road between the last point named and Curran's Crossing? What effect I want to know this injunction suit has had on it, if any?

A. The road would have been completed now if it had not been for this injunction suit.

Q. Well, at the time of this injunction suit, the time it was brought, what were you actually doing?

A. Working.

Q. Where?

A. At both ends.

Q. How come you to stop?

[fol. 998] A. This injunction suit broke up my financial arrangements.

Q. I will ask you to state to the Court whether or not you could complete this railroad within the time given you by the Interstate Commerce Commission if this injunction was dissolved?

Mr. Monroe: We object, he is calling for a conclusion.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

A. I can complete it.

Q. Will you do it?

A. Yes, sir, I will do it.

Recross-examination by Mr. Monroe, for the complainant:

Q. Have you, yourself, the five or six thousand dollars necessary to build it?

A. I haven't the money, but I have the ability to get it.

Q. Have you any agreement about getting that money, any definite agreement?

A. Tentative.

Q. What is that?

A. I can't tell you. I am sure you want to know.

Mr. Monroe: We insist if the Court please, that is very necessary.

The Court: I don't think that has anything to do with it.

Mr. Monroe: I except to the ruling of the Court.

Q. I wish you would take that map, Mr. Neville, and scale the distance from Curran's Crossing to Liberty Church?

A. I am like Mr. Ford, I can't scale it.

Q. Look at that map and give me your best judgment as to the distance?

A. Where is Liberty Church?

Q. Do you mean to say you don't know where it is?

[fol. 999] A. I told you positively that I didn't know.

Q. Then you undertook to give the approximate distance as 15 or 20 miles when you didn't know?

A. I stated that I didn't know.

Q. Do you see Liberty Church on the map?

A. Yes, sir.

Q. Give me the approximate distance from Liberty Church to Curran's Crossing, according to map "O"?

A. Eight or ten miles.

Q. No more than that?

A. Eight or 10 miles.

Q. Now, Mr. Neville, in order to be more sure, will you take this paper and lay it on the scale?

A. I don't think I can.

Q. Liberty Church appears to be half way between Lucknow and Drake's Church?

Mr. Stone: We object to the statement.

Q. Well, what is the distance to Curran's Crossing?

A. About $7\frac{1}{2}$ miles.

Q. And that is the distance that you estimated to be 15 or 20 miles?

A. I said I didn't know. I didn't testify to any knowledge of it at all.

Q. Is your familiarity with the location any more definite than your familiarity with this distance? Pearson is on the A. & V. and Liberty Church is your proposed road?

A. Near it.

Mr. Monroe: I reserve the right to further cross examine the witness.

[fol. 1000] By Mr. Stone:

Q. You have just been referring to a map, Exhibit "2" to your

testimony. I will ask you whether or not this is the map that was attached as an exhibit to your petition before the Interstate Commerce Commission?

Mr. Monroe: We object, the best evidence is a certified copy from the Commission.

The Court: I sustain the objection.

Q. This certificate recites that it refers to Document Number 9, which one was that?

A. The first.

Q. This is the map that was attached to that?

A. It was.

Mr. Monroe: We object to the leading question, and because the best evidence of the fact is a certified copy from the commission.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

Q. Was there any other map attached to that petition, outlining your road?

A. The profile.

Q. Was there any map?

A. A profile, not an alignment.

(Witness excused.)

[fol. 1000a] COLLOQUY BETWEEN COURT AND COUNSEL

By Mr. Stone: We now offer all the testimony of all the witnesses introduced by the Defendant, the Jackson & Eastern Railway Company, on the hearing of the motion to dissolve the injunction in this matter in August, 1923. We offer both the direct and redirect testimony of these witnesses. We also offer all the documents that were offered on that hearing by the Defendant in evidence.

Mr. Monroe: I ask whether or not they can only offer the direct and re-direct examination.

Mr. Stone: That is what you did.

The Court: I think you can offer what was taken on cross.

Mr. Stone: He has offered that.

Mr. Monroe: We now make each and every objection and each and every motion to strike out that was made to the testimony at the time it was taken. And moreover, we object to all of it as being incompetent, irrelevant and immaterial, and not the best evidence, and move to strike it all out.

And I make the same objections to the documents and the same motion to strike out that were made at the time they were introduced.

The Court: I overrule the objection.

Mr. Monroe: You don't overrule the objections that were sustained at the time they were made?

The Court: No, but I understood that you were objecting to all of it now.

Mr. Monroe: I except to the ruling of the Court.

[fol. 1001] S. A. NEVILLE resumed the witness stand.

By Mr. Stone:

Q. Mr. Neville, with respect to the two mile strip in the right of way that has not been secured by deed. Who is in possession of the two mile strip?

A. The J. & E. Railroad.

Q. How long has the J. & E. Railroad been in possession of it?

A. Since 1921.

Q. Under what authority did they take possession of it?

Mr. Monroe: We make the same objection, the written instrument is the best evidence.

The Court: Let him answer the question.

A. By agreement.

Q. With whom?

Mr. Monroe: I object, that is not the way to prove title to real estate.

Q. What kind of agreement?

A. Oral.

Q. What work, if any, has been done on it?

A. All the right of way has been cleared, and a great deal of grading has been done.

Q. Do you know who the property belongs to?

A. Yes, sir.

Q. Who?

A. Mr. Headman of the Clarion Ledger of Jackson, and Mr. Rainey of Arkansas and the Carter estate.

Q. You said that you had an oral agreement, what was the agreement?

Mr. Monroe: We object.

The Court: You can't go into the title.

[fol. 1002] Q. You said that you had possession of it?

A. Yes, sir. It has been transferred to J. B. Griffin of Ellisville, Mississippi, and I was to go ahead and do the work.

Mr. Monroe: I move to strike out the answer.

Q. Mr. Monroe, ask you if you had authority from the Interstate Commerce Commission to extend the time in which to build your road, and you said you did, have you that authority in your pocket?

A. I have.

Q. Will you introduce it as Exhibit "6" to your testimony, and let the stenographer so identify it?

A. I will.

The instrument was handed to the stenographer and it was then and there so identified.

[fol. 1003] Q. Attached to that paper is a letter. From whom is that letter?

A. Charles D. Mahaffie, Director Bureau of Finance.

Q. To whom?

A. S. A. Neville, President and General Manager.

Q. What accompanied that letter?

A. The certificate extending the time of my permit to build the road to December 31, 1925.

Q. You refer to Exhibit "6"?

A. Yes, sir.

Mr. Stone: I offer the letter and ask that it be identified as Exhibit "7" to the testimony of S. A. Neville.

The letter was then and there so identified.

[fol. 1004] By Mr. Monroe:

Q. Mr. Neville, this Exhibit "72" says, This will acknowledge receipt of your letter of the 12th. inst. to the Commission's Secretary enclosing application for extension of time for the building of the Jackson & Eastern Railway. What did you do, simply write enclosing the petition?

A. I made formal application.

Q. You didn't go to Washington?

A. No, sir.

Q. I asked you to bring in an order, copy of an order of the Commission. Are these the copies of the orders which you have brought in?

A. They are.

Q. They are in the order of date of October 5, 1921, July 12, 1921 and October 3, 1921. Is this the petition that you filed at the time?

A. Yes, sir.

Q. Do you recall when that was filed?

A. I do not, but it was prior to October 5, 1921.

Q. In that general neighborhood, I suppose?

A. Yes.

Q. Will you have these marked as Exhibits "8", "9", "10" and "11" to your deposition?

A. I will.

Mr. Monroe: In connection with the deposition of the witness I offer these Exhibits, these orders which you have produced.

These Exhibits were so identified by the stenographer.

Q. There was no other modifications of the order with respect to the point or points selected?

A. No.

(Witness excused.)

[fol. 1005] GEO. B. NEVILLE, having been called and duly sworn, testified as follows for and on behalf of the defendant, to-wit:

Direct examination by Mr. Stone, for the defendant:

Q. What is your profession, Mr. Neville?

A. Lawyer.

Q. What connection have you with the J. & E. Railroad?

A. My firm represents the J. & E. Railroad.

Q. Neville & Stone?

A. Yes, sir.

Q. Mr. Neville, who filed, what firm of lawyers filed the petition for the Eminent Domain to condemn a connection at Curran's Crossing?

A. Neville & Stone.

Q. I hand you a paper introduced by the Complainant in this cause marked Exhibit "H", which purports to be a petition for an eminent domain, and in connection therewith there is a certificate of the Circuit Clerk, D. P. Gayden, purporting to set forth the entries on the docket in the case of the J. & E. versus the A. & V. in the eminent domain proceedings. Did you have any correspondence touching that matter?

A. Yes, sir. This injunction was dissolved by the Chancellor on bill and demurrer prior to April 24, 1922.

Mr. Bozeman: If Mr. Neville proposed in any way to modify that certified copy we are going to object.

A. After the dissolution of the injunction by the Chancellor on bill and demurrer my firm started another eminent domain proceeding—

Mr. Bozeman: We object on the ground that the best evidence is a certified copy of their eminent domain proceedings.

The Court: I reckon he may make the statement.

Mr. Bozeman: We object to any statement of any eminent domain [fol. 1006] proceedings that was started unless the petition for the condemnation proceedings is introduced.

The Court: I will have to hear the testimony further.

A. We will produce the document. On April 24, 1922, after the dissolution of the injunction by the Chancellor, new proceedings was instituted. We sent to the Circuit Clerk at Brandon new writs to be issued returnable before John Neely, Justice of the Peace the 19th day of May, 1922. The first proceeding was returnable Friday, the 24th day of March, 1922. After the dissolution of the injunction we started new proceedings, and a few days after we started new proceedings the A. & V. Railway Company filed a motion before the Supreme Court for supersedeas, and that motion was argued orally before the Supreme Court by my firm and by Mr. Bozeman and Judge Thompson. I think it was on the 6th day of May, I am not sure, it was on Saturday before the 8th day of May,

and during the presentation of the motion, someone, I don't know whether it was Judge Thompson, Mr. Bozeman or myself, asked for time to file briefs on the motion for the supersedeas. Then Judge Thompson or Mr. Bozeman reminded the Court of the new proceedings that had been instituted returnable on May 19—

Q. What Court?

A. The Supreme Court—that new proceedings had been instituted to be heard May 19, and under that situation I promised the Chief Justice that I would immediately dismiss the new proceedings, and on May 8, when I got back to Meridian I wrote this letter that is attached to part of this Exhibit "H" and sent a copy of it to Chief Justice Smith.

Mr. Bozeman: If the Court please, we move to exclude the testimony as being incompetent and immaterial in this matter. The fact that he dismissed the proceedings has got nothing to do with it—

The Court: It was dismissed?

[fol. 1007] A. The last one was dismissed.

The Court: What is it you want to do?

By Mr. Stone:

Q. What petition was used on the second?

A. The one that was originally filed.

Q. Is a certified copy of it there?

A. Yes, sir, Exhibit "H."

Q. You testified that you wrote a letter to the Clerk and sent a copy of it to the Chief Justice, will you tell the Court the purpose of that letter?

A. With reference to the application filed by the J. & E. Railway versus the A. & V., dated April 22, 1922, wherein the J. & E. sought to condemn a switch connection at Curran's Crossing, we beg to say that the J. & E. desired to withdraw their application, therefore, please notify John Neely, Justice of the Peace, that there will be no hearing in this matter on the 19th inst. You need not draw a jury, the application has been withdrawn.

Q. What application?

A. My letter was dated April 22, the new summons were made on April 24, 1922, returnable May 19.

Q. Why was that letter written by you to the Clerk?

A. To carry out an agreement with Chief Justice Smith.

Q. State whether or not you have written any letter dismissing the original petition.

A. No, sir.

Mr. Monroe: We object, the document speaks for itself.

The Court: I overrule the objection.

Mr. Monroe: We except to the ruling of the Court.

[fol. 1008] Cross-examination by Mr. Bozeman, for the complainant:

Q. As I understand your testimony what was really done in this condemnation proceeding was this, that on February 21, 1922, you filed in Rankin County an application for this eminent domain proceeding here, certified copy of which is shown in this Exhibit "H"?

A. Yes, sir.

Q. Thereupon you had process issued in that case on that petition returnable on the 24th day of March, 1922?

A. Yes, sir.

Q. Now, in the meantime, before the hearing, this injunction was sued out?

A. Yes, sir.

Q. Thereafter, on the 22nd day of April, 1922, you wrote to the Clerk of the Circuit Court of Rankin County this letter, dated April 22, 1922. That letter is not part of the Exhibit, you have the letter?

A. Yes.

Q. You wrote the letter which I now show you?

A. Yes, sir.

Q. And in that letter you enclosed to him as stated there a new summons to be issued upon the original application, which you had filed in February?

A. Yes, sir.

Q. And that is what you mean by starting a new proceeding writing a new letter and sending new processes?

A. Yes, sir.

Q. And before the return day of that new process on the original petition you wrote the other letter of May 8, 1922, which you have?

A. Yes, sir.

[fol. 1009] Q. You filed no application on the petition for the condemnation except this one filed February 25, 1922?

A. That's all.

Mr. Bozeman: I offer in connection with the testimony of Mr. Geo. B. Neville, as Exhibit "A" certified copy of the letter.

The letter was then and there so identified.

[fol. 1010] By Mr. Stone:

Q. Mr. Neville, when was the first knowledge that you had of the docket entries on the issue docket of the Circuit Court of Rankin County?

A. I think it was Saturday of last week. I tried some time to get this, but I think that it was last week that I got it. Miss Hosey left it in my office, she said she got it from New Orleans.

Q. When was the first information you had that this entry was made on the docket?

A. When I read it, when Miss Hosey brought it to my office, the latter part of last week.

Q. Do you remember the time the letter was introduced in court?

A. It was some months ago, but I didn't examine it at that time carefully. I didn't notice that document.

Q. Is there anything further that you would like to say?

A. No, sir.

Q. I will ask you another question. In case this injunction is dissolved as attorney for the J. & E. what will be done?

Mr. Monroe: We object to that as being irrelevant and immaterial.

The Court: I overrule the objection.

Q. With respect to the eminent domain case?

A. New proceedings will be started as I understand the law.

Mr. Monroe: We object to counsel testifying what will be done in the future.

The Court: I overrule the objection.

Mr. Monroe: I except to the ruling of the Court.

By Mr. Monroe:

Q. Mr. Neville—

Mr. Stone: We object, the counsel that started the cross-examination should finish it.

The Court: I overrule the objection.

Q. Mr. Neville, you don't recall that when this document was [fol. 1011] introduced in evidence at the hearing in August, 1923, which was months ago, that this certified copy was argued about for 25 or 30 minutes?

A. Yes, we argued as to the admissibility of the certified copy, but I didn't have my attention called to that particular paper.

Q. You don't recall arguing about this very letter at the time?

A. I don't say it was not there, but my attention was not called to it. We discussed with the Court the admissibility of that Exhibit.

Q. Did you have this Exhibit in your hand?

A. I don't recall.

Q. You don't deny it?

A. No, I can't remember.

Agreement.—It is hereby agreed between the parties that the question of the damages on the dissolution of the injunction may be deferred by the Chancellor, to be heard at a later date.

Defendant rests.

[fol. 1012] The following evidence was offered in rebuttal by and on behalf of the Complainant:

LARZ A. JONES, having been recalled, testified in rebuttal as follows:

Direct examination by Mr. Monroe, for the complainant:

Q. Mr. Jones, a great deal has been said on the part of the defendant here as to the use by the J. & E. of the A. & V. facilities, terminals and bridge at Jackson, Mississippi. I wish you would explain to the Court what such use would mean?

Mr. Stone: We object, because Mr. Jones' own testimony will show that they went into that fully in the preliminary hearing, stating that the amount of traffic was so great that the A. & V. couldn't stand any more. We object to the repetition, and for the further reason that it is not in rebuttal.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. Such a use would mean in the first place the use of the A. & V. Railroad, its bridge and terminals by the employees of another, to be selected by another, the Jackson & Eastern Railroad, who could not possibly be under the complete control of the A. & V.

In the second place the trains of the Jackson & Eastern would create a great disturbance that would affect the operations of the A. & V., because their operations would not be under the control of the A. & V. except at the immediate time they reached the road, and it would be impossible for the operating officers, the train dispatcher and superintendent to anticipate with any certainty the movements that might be desired to be made by the Jackson & Eastern, and that would mean great inconvenience and delay and expense to the A. & V.

And third, the terminals of the A. & V. in Jackson are already taxed, fully taxed, so that the Company is even now engaged in [fol. 1013] increasing the facilities in order to be able to take care of its own business, and to take care of additional business would mean that the terminals already overtaxed would be to render that much greater burden, expense and delays, an additional burden and delay over and above the question of compensation.

Mr. Stone: We move to exclude the answer of the witness as being incompetent, irrelevant and immaterial, and not in rebuttal.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

Q. Mr. Jones, it has been testified, if I remember and understand the testimony, that the Jackson & Eastern could get the right to use the main line and terminals of the A. & V. from the junction at Curran's Crossing into Jackson, but that it could not get a similar right from a junction point at the point designated by the A. & V. Railroad. What have you to say on the subject?

A. I say that the Jackson & Eastern could not with the voluntary consent of the A. & V. Railway get permission to operate its trains over the tracks to the terminals of the A. & V. Railway Company, from Curran's Crossing to Jackson, nor could it with the voluntary consent of the A. & V. get such permission to operate its engines over the track, bridge and terminals from the point near Pearson, nor could it, in my judgment, get such authority from any other source, not in my judgment. In both instances, or in either instance.

Q. It has been testified here that in the matter of the division of rates that with the J. & E. having a junction point near Pearson, as suggested by the A. & V., that the J. & E. would be at the mercy of the A. & V. what have you to say as to that?

A. The question of the division of through freight and passenger rates between Railroads is primarily a matter of amicable agreement. [fol. 1014] Q. But if this is not reached?

A. Then, the Interstate Commerce Commission——

Mr. Stone: We object to the witness undertaking to interpret the law.

The Court: Go ahead.

A. The Interstate Commission as a final authority has power to determine what the proper division should be.

Mr. Stone: We except to the ruling of the Court.

Q. Mr. Jones, have you as chief executive of the A. & V. received protest signed by all the conductors on the A. & V. Railway and protest signed by the road engineers on the A. & V. against the proposed point of junction at Curran's Crossing?

Mr. Stone: We object to that as being incompetent, irrelevant and immaterial, being merely an ex parte statement, and it is not in rebuttal.

The Court: I sustain the objection.

Mr. Monroe: I except to the ruling of the Court.

A. I have received such petition.

Mr. Stone: We move to exclude the answer.

The Court: He can state that he received such a petition.

Mr. Monroe: May I have them identified?

The Court: You may.

Q. I hand you marked EE-1 and EE-2 such petition and I ask you if this is what you referred to?

Mr. Stone: We object.

The Court: I will allow him to state that he received the protests but I will not allow the protests in the record.

Mr. Monroe: I ask the permission of the Court to attach these documents to my bill of exceptions.

The Court: All right.

[fol. 1015] Q. Mr. Jones, something was said by the defense in this case as to a notice given the A. & V. Railway Company in certain proceedings in Finance Docket Number Nine of the Interstate Commerce Commission. Will you please state to the Court what, if any notice was received by the A. & V. Railway Company of that proceeding?

A. I received one notice, only one notice, being the one of November 29, 1920, the notice being—

Mr. Stone: We object to the contents of the notice.

Q. Is the document which you have in your hands, marked BB, the notice which you received?

A. It is.

Q. In connection with the testimony of the witness I offered the notice marked "BB."

Mr. Stone: No objections.

The document was introduced and it was then and there identified.

[fol. 1016] Q. Mr. Jones, was any appearance entered by the A. & V. on the hearing of which notice BB refers?

A. There was not.

Q. Why not?

A. Because the notice is with reference to the application of the Jackson & Eastern Railroad for certificate for the present and future public convenience and necessity require or will require the construction by the applicant a line of railroad from Sebastopol in Scott County, through Scott, Leake and Rankin and Hinds Counties, in the State of Mississippi, and the A. & V. had no objections to the construction of the railroad from Sebastopol to Jackson.

Mr. Stone: We object, the line of railroad was not to be constructed through Hinds County at all, but to a point on the line of the A. & V.

Q. Something was said about another hearing, was any notice of any other hearing ever received by you?

A. It was not.

Q. Mr. Jones, Mr. Neville, said on the witness stand as a reason why his line should be permitted a junction at Curran's Crossroads that if he don't get a junction there that he might have to go into Jackson and have to build an expensive bridge and terminal which would be costly. I wish you would state in a general way what would be the cost and expense to the A. & V. resulting from the construction of this embankment of the J. & E. diagonally across the Pearl River Valley, as to washout at Pearl River bridge?

Mr. Stone: We object, this is not in rebuttal.

The Court: I suppose that it is admissible, I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. The nature and extent of the wash out, would, of course, effect the cost of repairing the washout itself and the rebuilding of the [fol. 1017] bridge, the rebuilding of the trestles and the replacement of the fill, and the building of temporary trestles, this would amount to many thousand dollars. The interruption to the traffic would also be very serious and expensive. The earnings of the A. & V. are over ten thousand dollars a day—

Mr. Stone: We object, that is exactly what he testified to on direct examination.

The Court: I overrule the objection.

Mr. Stone: We except to the ruling of the Court.

A. The collapse of the bridge, the trestle and fill might well be the result of severe strain with reference to trains, if other trains are combined with it. And the collapse of the bridge and trestle on account of trains passing over them would cause accidents involving, perhaps many lives and a tremendous amount of property. Of course, the lives of the people could not be estimated, but the damages to the people might result in a very tremendous loss to the Railway Company. No proper statement could be made or quoted of all the expense incident to such accidents, but certainly it would be very great, and entirely out of all relation to any compensation that might be paid under any circumstances by the right for the use of the property.

Mr. Stone: We object to this line of testimony.

The Court: Objections sustained.

(Witness excused.)

Complainant rests.

Defendant rests.

[fol. 1018]

[Title omitted]

STENOGRAPHER'S CERTIFICATE

I, Bettie Hosey, official court stenographer for the Second Chancery Court District of the State of Mississippi, do hereby certify that the above and foregoing 247 pages contain a full, true and complete transcript of my stenographic notes taken on the trial of the above styled cause.

Witness my signature this the 30th day of January, 1924.

Bettie Hosey, Stenographer.

The foregoing transcript endorsed on back: Filed April 19th, 1924. W. J. Buck, clerk, by W. J. Brown, D. C."

[fol. 1919] EXHIBIT NO. ONE-A TO THE TESTIMONY OF S. A. NEVILLE

Interstate Commerce Commission
Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report and certificate filed and entered July 12, 1921, in Finance Docket No. 9, in the Matter of the Application of the Jackson & Eastern Railway Company for Certificate of Public Convenience and Necessity, the original of which is now on file and of record in the office of the Commission.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission, this 25th day of January, A. D., 1921.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 1020] Received Jul. 14, 1921. Bureau of Dockets

Finance Docket No. 9

In the Matter of the Application of THE JACKSON & EASTERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity

Submitted June 1, 1921. Decided July 12, 1921

1. Certificate issued authorizing the construction of a line of railroads from Sebastopol to Jackson, Miss.

2. Permission granted to retain excess earnings of such extension for a period of ten years.

George B. Neville for the Jackson and Eastern Railway Company.

Docket of the Commission

By the Commission:

The Jackson & Eastern Railway Company, a carrier by railroad subject to the interstate commerce act, on June 10, 1920, filed an application for a certificate that the present and future public convenience and necessity require or will require the construction of an [fol. 1021] extension of its line of railroad from Sebastopol, Scott County, to Jackson, Hinds County, all in the State of Mississippi. Two hearings were held for us by the Mississippi Railroad Commission which, following each hearing, recommended that application be granted. The project also has the endorsement of the Governor and the members of both branches of Congress of that State.

In 1911 and 1912, the President of the Applicant built the Meridian & Memphis Railroad extending from Meridian to Union,

a distance of 32.6 miles. At that time the intention was to build a line in a northwesterly direction from Meridian to a point of connection with the Illinois Central Railroad some distance north of Jackson. The Meridian & Memphis Railway was operated as an independent line until January, 1917, when it was sold to the Gulf, Mobile & Northern. In the meantime, and during 1914 and 1915, the President of the Applicant built a line from Union to Sebastopol, a distance of 13.89 miles. In January, 1916, the Applicant was incorporated under the laws of Mississippi and apparently took title to this piece of track which it now operates. No construction work has been done by the Applicant since its incorporation. The existing line connects at Union with the Gulf, Mobile & Northern, hereinafter termed the Gulf, and with the Meridian & Memphis Railroad above referred to. The applicant states that connection will be made at Jackson with the Illinois Central Railroad, Gulf & Ship Island Railroad, New Orleans Great Northern Railroad, Alabama & Vicksburg Railway, hereinafter called the Central, the Ship Island, the [fol. 1022] Great Northern, and the Vicksburg, respectively, and the Yazoo & Mississippi Valley Railway. Scott and Rankin Counties through which the proposed line would extend are crossed from east to west by the Vicksburg, but Leake County is not now served by any existing line. The proposed line, leaving Jackson and for the greater part of the length paralleling the Pearl River, would bisect the angle between the Central and the Vicksburg lines. The average distance between the route as laid out and the Vicksburg line is about 15 miles. The territory which is naturally tributary to the proposed line consists of 278 square miles in Rankin County, 237 square miles in Scott County, and 432 square miles in Leake County, or a total of 947 square miles. The proposed line would be approximately 61 miles in length.

The Applicant's plans contemplate that a large part, if not all, of the necessary rights of way will be donated by local parties, and that it will receive substantial assistance from civic bodies at Jackson, in the way of terminals and possibly a cash contribution. It is proposed to establish connections with the Gulf at Union for the handling of through traffic to the north and south. The mileage between Meridian and Jackson over the Vicksburg, however, is considerably shorter than the route formed by the Applicant's line and the Meridian & Memphis Railroad. Similarly, the distance from Jackson to Ackerman via the Central, is much shorter than the proposed route over the applicant's line to Union and thence over the Gulf to Ackerman. The advantage of the proposed line, considered as a [fol. 1023] connecting link between existing lines, is said to arise from the fact that the Great Northern, extending from New Orleans, ends at Jackson, Miss., and has no outlet to the north. Its tonnage must therefore be delivered to some connecting line at Jackson, whereas other lines extending north have their own rails into New Orleans and the Great Northern does not now obtain an equal share of the traffic. The same is said to be true to a certain extent of the Ship Island route. It is not apparent, however, that any actual

saving in length of haul can be obtained by means of the proposed line as a connecting link for other routes.

The evidence is to the effect that the territory is heavily timbered but can not develop agriculturally until the land has been cleared; that the farmers and the owners of land are reluctant to destroy the timber, as has been done to some extent in the past, for the sole purpose of clearing additional acreage; that such crops as are raised must now be transported by wagon to the Vicksburg or to the Gulf, over dirt roads which are badly overflowed during periods of heavy rainfall and are practically impassable during a great part of the year; and that the distance to any existing *existing* railroad acts as a deterrent to the planting of crops. The greater part of the land is owned by individuals, principally farmers, but there are a number of tracts owned by various syndicates, one of which operates a logging road from its holdings to a connection with the Vicksburg, a short distance east of Jackson. It is pointed out that the building of the proposed line would furnish an outlet for the timber, and that, when the land [fol. 1024] has thus been cleared, the agricultural possibilities of the region are practically unlimited. The Applicant presents proof tending to show the quantities of standing timber available for manufacture along the line, the acreage of cultivated, grazing and timber land accessible to the line, and considering only that territory which is as near or nearer the proposed line than to the present route of the Vicksburg. The timber estimates are taken from the assessment rolls in the several counties, and it is pointed out that the stand of timber as returned for assessment by the owners is usually estimated at a very conservative figure. The Applicant suggests that such estimates should be multiplied by three in order to ascertain the actual amount of timber available.

It is estimated by the applicant that there are approximately 425,000,000 feet of timber in the territory to be served.

The demand for railroad facilities from the inhabitants of the territory in question is very insistent and the utmost confidence is expressed that the building of the line will bring about extensive lumbering operations and that those will be closely followed by agricultural development producing a constantly increasing tonnage. The estimates of the time necessary to manufacture the available timber vary from 20 to 30 years. It appears that a large area of this timber is owned by the Gammill Lumber Company which operates a logging road from Canton easterly to the Pearl River and up the river toward Carthage, a distance of 15 miles, and a second logging [fol. 1025] road extending from Pelahatchie on the Vicksburg, 27 miles east of Jackson. This company has filed with us a protest against the granting of the application.

The cost of construction of the proposed line, assuming the use of 60 pound relay steel, is estimated by the Applicant at \$860,000, or about \$15,000 per mile. It is obvious that this estimate is low, even if the donations of all rights of way be assumed. Net revenues are estimated by the applicant at \$105,000 for the first year, \$140,000 for the second year, and \$175,000 per annum for the remaining three years of the five-year period. The operating ratio assumed by

the Applicant is taken at 65 per cent. On the 13.89 miles of line which has been in operation since 1916, the Applicant's books show a net corporate income for the three-year period of about \$5,000 without taking into account the increased rates effective September 1, 1920.

The applicant's financing plan contemplates the construction of the line will be financed by its president who will be reimbursed by the issue of 6 per cent bonds to be hereafter issued. Such bonds would in turn be sold by him for such prices as he could obtain.

The record as a whole fails to afford reasonable assurance that the project will become a permanently successful enterprise. However, since local interests are ready and willing to assume the burden with full knowledge of what the future may hold for the enterprise, it seems proper that they should be permitted to do so. But in view [fol. 1026] of the uncertain future of the road, we do not think it would be proper for us to sanction at this time the issuance of bonds to finance its construction. The applicant has filed with us its application under section 210 of the Transportation Act, 1920, for a loan the proceeds of which would, in part, be used to finance the proposed construction. In the light of the record we do not think that the enterprise is one which should be financed by the Federal Government.

We find the present and future public convenience and necessity require or will require the construction of the extension proposed in the application upon the condition above referred. A certificate to that effect will accordingly be issued. We further find that because of the probable cost of construction and the uncertainty of adequate return during the early years of operation, the Applicant should be permitted to retain, for a period of not more than ten years, all of its earnings derived from such extension, in so far as the same are capable of being segregated from the earnings of the Applicant's existing line, but conditioned upon completion of the extension on or before December 31, 1922. A certificate to that effect will accordingly be issued.

Daniels, Commissioner, dissents.

[fol. 1027]

Certificate

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION,
HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 12TH DAY
OF JULY, A. D. 1921.

Finance Docket No. 9

In the Matter of the Application of THE JACKSON & EASTERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity

Investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and

conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require or will require the construction of the extension of the line of the Jackson & Eastern Railway from Sebastopol to Jackson, through the Counties of Scott, Leake, and Rankin, in the State of Mississippi, a distance of approximately 61 miles.

It is ordered, That said Jackson & Eastern Railway Company be, and it is hereby, authorized to construct said extension: Provided, however, that this certificate is issued upon the express condition that said Jackson & Eastern Railway Company shall not issue any bonds, or other evidence of indebtedness, for the construction of said extension or for the refunding of any obligations arising out of such [fol. 1028] construction, directly or indirectly, for a period of five years from the date upon which actual construction of said extension shall commence; and that such extension shall be completed and placed in operation on or before December 31, 1922.

It is further ordered, That said Jackson & Eastern Railway Company be, and it is hereby, permitted to retain for a period of ten years from the date on which said extension shall be placed in operation, but not extending beyond December 31, 1932, all of the earnings derived from such extension: Provided, however, that this permission is expressly conditioned upon the keeping of applicant's accounts in such manner that the earnings derived from such extension can be segregated from those of the Applicant's other line or lines, and that said extension shall be completed and placed in operation on or before December 31, 1922, as aforesaid.

It is further ordered, That said Jackson and Eastern Railway Company, when filing schedules establishing rates and fares to and from points on said extension, shall in such schedules make specific reference to this certificate by title, date and docket number.

By the Commission:

(Signed) George B. McGinty, Secretary, Interstate Commerce Commission.

Endorsed: Received and filed April 19, 1924. W. J. Buck, clerk.
W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1029] EXHIBIT No. 1 TO THE TESTIMONY OF S. A. NEVILLE

Charter of the Jackson and Eastern Railway Company

To the Governor of Mississippi:

The undersigned persons desiring the creation and organization of a Railroad Company under the provisions of Chapter 118, Mississippi Code of 1906, do hereby make application therefor, and for such purposes as provided in Section 4073 of the aforesaid Chapter, do hereby declare as follows, to-wit:

I. The name, residence, and post office address of each of said applicants are:

S. A. Neville, R. W. Harris and C. J. Currie, Residence and post office of each,—Meridian, Mississippi.

II. The western terminal point of the proposed railroad is to be within the corporate limits of the City of Jackson, County of Hinds, State of Mississippi, and it is to extend in northeasterly direction, passing through the Counties of Hinds, Rankin, Scott, Leake, Neshoba and Newton. The eastern terminal of the said proposed railroad is to be the town of Union, Newton County, Mississippi.

III. The name selected by which said proposed corporation is to be known and designated is: the Jackson and Eastern Railway Company.

[fol. 1030] IV. It is hoped that the new railroad will be completed between the said terminal points within three years from date.

Respectfully submitted, this the 16th day of July, 1915.

(Signed) S. A. Neville, R. W. Harris, C. J. Currie.

STATE OF MISSISSIPPI,

Lauderdale County:

Personally appeared before the undersigned authority in and for said County and State, S. A. Neville, R. W. Harris, and C. J. Currie, who acknowledged that they signed and delivered the above and foregoing application for the organization of the Jackson and Eastern Railway Company on the day and year therein mentioned.

Given under my hand and official seal, this 16th day of July, 1915.

(Signed) E. B. Williams, Notary Public in and for Lauderdale County, Mississippi.

Jackson, Miss., 1/24/16.

The foregoing application for a charter for the Jackson and Eastern Railway Company conforms to law.

(Signed) Ross A. Collins, Attorney General, by Geo. H. Ethridge, Assistant Attorney General.

[fol. 1032]

State of Mississippi

Executive Department

Jackson

To all whom these presents shall come, Greeting:

Whereas, Mr. S. A. Neville, Mr. R. W. Harris, and Mr. C. J. Currie, whose residence and post office address is Meridian, Mississippi, have made application to us declaring their desire to organize a railroad corporation under the laws of this State:

Now, therefore, I, Theo. G. Bilgo, Governor of the State of Mississippi, by virtue of the authority in me by the Constitution and

laws of the State, do issue this day my proclamation authorizing the above named parties to organize a railroad corporation with the terminal points of said railroad as follows:

The western terminal point of said railroad is to be within the corporate limits of the City of Jackson, County of Hinds, State of Mississippi, and it is to extend in northeasterly direction, passing through the Counties of Hinds, Rankin, Scott, Leake, Neshoba and Newton. The eastern terminal of the said railroad is to be the town of Union, Newton County, Mississippi.

[fol. 1033] The name by which this corporation shall be known is the "Jackson and Eastern Railway Company."

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed. Done at the Capitol, in the City of Jackson, this the Twenty Fourth day of January, A. D. 1924.

(Signed) Theo. G. Bilbo.

By the Governor: (Signed) Jos. W. Power, Secretary of State.

STATE OF MISSISSIPPI,
Neshoba County:

I, W. J. Brantley, Clerk of the Chancery Court of said County, do hereby certify that the within Trust Deed was filed for record in my office on the 8th day of July, 1916, at 10 o'clock, A. M., and that the same, together with the certificate and acknowledgment, is duly recorded in Book T. T., pages 209 to 215, of the record of deeds in my office.

Given under my hand and seal of office, in the town of Philadelphia, this the 13th day of July, 1916.

(Signed) W. J. Brantley, Clerk, by Jones Brantley, D. C.

[fol. 1034] State of Mississippi, Executive Department

The attached application for charter for The Jackson and Eastern Railroad Company is submitted to the Honorable, The Attorney General for his advice and opinion as to the constitutionality of the provisions thereof.

Respectfully, (Signed) Theo. G. Bilbo, Governor.

January 23d, 1916.

[fol. 1035] STATE OF MISSISSIPPI:

Office of Secretary of State, Jackson

I, Joseph W. Power, Secretary of the State of Mississippi, do hereby certify that the within and attached report of the organization of the Jackson & Eastern Railway Company has been this day recorded in the records of Incorporations in Book No. 20, at page No. 143, in pursuance of law.

Witness my hand and the Great Seal of the State of Mississippi this the 5th day of July, 1916.

(Signed) Jos. W. Power, Secretary of State. (Seal.)

[fol. 1036] Statement of Organization of the Jackson and Eastern Railway Company

The undersigned, who constitute all the Directors of the Railroad corporation organized under the laws of the State of Mississippi, and known as the Jackson and Eastern Railway Company, do hereby certify that acting by virtue and under the authority of a proclamation issued by the Governor of the State of Mississippi, dated January 24, 1916, authorizing S. A. Neville, R. W. Harris, and C. J. Currie to organize a railroad corporation to be known as the Jackson and Eastern Railway Company, this day met in the City of Meridian, Mississippi, for the purpose of organizing said corporation at which meeting there were present S. A. Neville, R. W. Harris and C. J. Currie.

S. A. Neville was chosen Chairman, and C. J. Currie, Secretary.

By Laws for the government of the Corporation were adopted and enrolled in the minutes of the meeting. The amount of Capital Stock of the said Corporation was fixed by said By Laws at one hundred thousand dollars, the same being divided into shares of one hundred dollars each.

[fol. 1037] The said By Laws of the said Corporation provide for a Board of Directors consisting of Three stockholders of the Corporation, and S. A. Neville, R. W. Harris and C. J. Currie were thereupon elected as such Directors to serve for the ensuing year ending July 4, 1917.

The following officers were elected: S. A. Neville, President, R. W. Harris, Vice President and General Manager, C. J. Currie, Secretary and Treasurer.

Thereupon, the said Corporation designated and named the Jackson and Eastern Railway Company, was at and by said meeting and action of said organizers, considered and declared to be organized in the manner and form provided therefor by the laws of the State of Mississippi, and the said Directors were also instructed to prepare and forward to the Secretary of the State for filing and recording in his office, the statement showing what was done to perfect the organization of the aforesaid Corporation; whereupon the said meeting adjourned.

And, in accordance with said instructions this statement is respectfully submitted with the request that the same be accepted as sufficient in law for the purposes intended, and that the same be filed and recorded and a certificate of such fact, under the great seal of the State of Mississippi be issued to the said Corporation.

[fol. 1038] Witness our signatures this the 29th day of January, 1916.

(Signed) S. A. Neville, R. W. Harris, C. J. Currie.

STATE OF MISSISSIPPI,
Lauderdale County:

Before me, B. H. Rhodes, a Notary Public, in and for said County and State, this day personally appeared S. A. Neville, one of the above named Directors of the Jackson and Eastern Railway Company, whose signature appears to the foregoing statement, who, being duly sworn deposes and says that the allegations, matters and things set forth and stated in the above instrument of writing is a correct and true statement of the proceedings of the meeting of the organizers of the said railroad company, held on the 29th day of January 1916, had and done as and for the organization of said Organization (Signed) S. A. Neville

Sworn to and subscribed before me this the 4th day of July 1916. (Signed) B. H. Rhodes, Notary Public.

[fol. 1039] STATE OF MISSISSIPPI,
Newton County:

I, D. B. Spivey, Clerk of the Chancery Court of said County, certify that the foregoing Deed was received here for record on the 7th day of July, A. D., 1916, and has been duly recorded by me in Deed Book No. 40, page 12.

Given under my hand and official seal at office Decatur, Mississippi this 7th day of July, A. D., 1916.

(Signed) B. D. Spivey

[fol. 1040] Interstate Commerce Commission
Bureau of Finance
Washington

June 15, 1923.

Mr. S. A. Neville, President Jackson and Eastern Railway Company
Meridian, Mississippi.

DEAR SIR: This will acknowledge receipt of your letter of the 12th instant in the Matter of the Application of the Jackson and Eastern Railway Company, Finance Docket No. 9.

A Copy of the Commission's order of November 29, 1920, assigning the case for further hearing before the Mississippi Railroad Commission on December 13, 1920 was personally served on the Authorized Agent of the Alabama and Vicksburg Railway Company at Washington on November 30, 1920. The record does not show that notice of the hearing held on August 3, 1920, was given to that carrier by this Commission. Apparently notices of the first hearing were sent out by the Mississippi Railroad Commission and it is possible that that Commission may have notified the Alabama and Vicksburg Railway Company.

Very truly yours, (Signed) Chas. D. Mahaffie, Director

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk
by W. J. Brown, D. C.

[fol. 1041] EXHIBIT No. 3 TO THE TESTIMONY OF S. A. NEVILLE

Interstate Commerce Commission

Bureau of Finance

Washington

HCD:EO.

June 15, 1923.

Mr. S. A. Neville, President Jackson & Eastern Railway Co.,
Meridian, Mississippi.

DEAR SIR: This will acknowledge receipt of your letter of the 12th instant in the matter of the application of the Jackson and Eastern Railway Company, Finance Docket No. 9.

A copy of the Commission's order of November 29, 1920, assigning the case for further hearing before the Mississippi Railroad Commission on December 13, 1920, was personally served on the Authorized Agent of the Alabama & Vicksburg Railway Company in Washington on November 30, 1920. The record does not show that notice of the hearing held on August 3, 1920, was given to that carrier by this Commission. Apparently, notices of the first hearing were sent by the Mississippi Commission and it is possible that that Commission may have notified the Alabama & Vicksburg Railway Company.

Yours very truly, (Signed) Charles D. Mahaffie, Director.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk,
by W. J. Brown, D. C.

[fol. 1042] EXHIBIT No. 4 TO THE TESTIMONY OF S. A. NEVILLE

Interstate Commerce Commission

Office of the Secretary

Washington

George B. McGinty, Secretary

February 7, 1922.

Neville & Stone, General Attorneys Jackson & Eastern Railway Co.,
Meridian, Mississippi.

GENTLEMEN: On December 10, 1921, you filed with the Commission, on behalf of the Jackson & Eastern Railway Company, a complaint against the Alabama & Vicksburg Railway Company, under Docket No. 13361, in which you pray that the Commission issue and order authorizing, directing and requiring a physical connection between the Jackson & Eastern Railway Company and the Alabama & Vicksburg Railway Company at a point described in the complaint east of Pearl River, and also authorizing, directing, and requiring the Alabama & Vicksburg Railway Company to permit

the use of that portion of its main line from the point of said proposed physical connection to a point on the west side of the Pe River on Commerce Street in the City of Jackson, Mississippi, for the purpose of enabling the Jackson & Eastern Railway Company to run the engines, trains, and cars over the said portion of the main line of the Alabama & Vicksburg Railway.

[fol. 1043] You invoke the authority of the Commission under paragraph 9, of section 1, and paragraph 4, of section 3.

Your complaint has been considered by the Commission, and I am directed to call your attention to the decision of the Supreme Court of the United States in U. S. v. B. & O. Southwestern Railway, 226 U. S. 14, wherein the Court construed paragraph 9 of section 1. The Court said:

"The words 'lateral, branch line' do not refer to what the applicant may become or be made by order of the Commission but to what it already is when it applies. The power of the Commission does not extend to ordering a connection wherever it sees fit, but is limited to a certain and somewhat narrow class of lines. * * But here, as we have said, this determination of the Commission that the applicant shall be a branch line is not enough; the applicant must be a branch before it applies. That is the absolute and reasonable condition. That some shippers would be accommodated by a switch connection is not enough."

It seems clear that under this provision of the act the Commission is without authority to grant the relief prayed for.

Paragraph 4 of section 3 of the act provides:

[fol. 1044] "If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track, or track for a reasonable distance outside of such terminal, of any carrier by another carrier or other carriers, on such terms or for such compensation as the carriers affected may agree upon," &c.

From the reading of your complaint it does not appear that your company is invoking the power of the Commission to require the Alabama & Vicksburg Railway Company to permit the use of its terminal at Jackson by your Company, but that you are invoking the power of the Commission to require the Alabama & Vicksburg Railway Company to permit your company to operate over its rails from the point of the proposed physical connection to a point within the City of Jackson, Mississippi, where connections will be made with other carriers for through traffic, or in order to enable the Jackson & Eastern to reach the terminals of the New Orleans Great Northern, which apparently it contemplates using. Upon this statement of facts the Commission would apparently have no jurisdiction to grant the relief prayed for.

Under all the circumstances, the Commission has thought best to bring the above facts and statements of law to your attention in order

that your company might be fully advised as to the Commission's [fol. 1045] lack of power to grant the relief prayed for, and so as to enable you, if so desired, to make such other arrangements for the construction or operation of the road as might appear to be desirable. Under the circumstances above outlined, it is assumed that you will request the Commission to dismiss the complaint without prejudice.

Respectfully, George B. McGinty, Secretary.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk,
by W. J. Brown, D. C.

[fol. 1046] EXHIBIT NO. 5 TO THE TESTIMONY OF S. A. NEVILLE

Jackson and Eastern Railway Company

Rankin County

C. J. Tanner and Mrs. C. J. Tanner to Jackson and Eastern Railway Company, November, 1921. A strip of land 100 feet wide being 50 ft. on either side of the center line of the survey as now located over and across the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, Section 14, Township 5, Range 1, East, South of the Jackson and Brandon Road containing 2.95 acres, more or less, as now located over and across said lands. The grantee agrees to provide a road crossing for hauling about the farm and further agrees to provide a sub-passageway for cattle, the same to be provided within 30 days after trains are regularly operated along the above right of way on the above described lands. \$369.03

James Hurst, C. E. Sullivan and Mrs. C. E. Sullivan to Jackson and Eastern Railway Company, November, 1921. Beginning at the point of intersection of a line 50 ft. north of and parallel to the center line of the proposed Jackson and Eastern Railway Company, and the east boundary line of the lands of James Hurst, being the west boundary lines of land owned by R. E. Cox, also and running in a westerly direction along a line 50 ft. north of and parallel to the center line of the proposed Jackson and Eastern Railroad, to an intersection with the north boundary line of the right of way of the Alabama and Vicksburg Railway, thence in a southeasterly direction [fol. 1047] along the north boundary line of the right of way of the Alabama and Vicksburg Railway, thence in a southeasterly direction along the north boundary line of the right of way of The Alabama and Vicksburg Railway Company to the southeast corner of the lands of James Hurst, thence in a northerly direction along the dividing line between the lands of James Hurst and R. E. Cox to the point of beginning.

The land herein described is the southern portion of the 4.91 acres, more or less, tract bought by James Hurst, June 4, 1920, from Mrs. E. C. Rogers lying in the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Section 14, Township 5 North, Range 1 East, Rankin County, Mississippi, bounded as follows: On the north by lands of James Hurst, on the west and south by lands of the Alabama and Vicksburg Railway, and on the east by lands of R. E. Cox, and this tract described contains 0.53 acres, more or less. . . . \$108.70

R. E. Cox and Mrs. Flora Zell Cox to the Jackson and Eastern Railway Company, November, 1921. Beginning at the point of intersection of a line 50 ft. north of and parallel to the center line of the proposed Jackson and Eastern Railway Company and the east boundary line of the lands of R. E. Cox, being the west boundary line of the lands of the Hederman Estate, also and running in a westerly direction along a line 50 ft. north of and parallel to the center line of the proposed Jackson and Eastern Railway to the east boundary line of the lands owned by James Hurst, thence in a southerly direction along the boundary line of the lands of James Hurst and the land of R. E. Cox, or extension thereof to the lands of the Alabama and Vicksburg Railway Company, thence in a southeasterly and easterly direction along this boundary [fol. 1048] line between the lands of the Alabama and Vicksburg Railway Company and the lands of R. E. Cox to the west line or extension thereof, of the lands of the Hederman Estate, thence in a northerly direction along the boundary line between the lands of R. E. Cox and the lands of the Hederman Estate to the point of beginning. The land herein described is the southern portion of the tract owned by R. E. Cox in the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Section 14, Township 5, North, Range 1, East, in Rankin County, Mississippi, and is bounded as follows: On the north by lands of R. E. Cox, on the west by lands of James Hurst, on the south by lands of the Alabama and Vicksburg Railway Company, and on the East by lands of the Hederman Estate, and this tract described contained 1.15 acres, more or less. . . . \$157.94

[fol. 1049] Jackson and Eastern Railway Company Right of Way Deeds

Rankin County

A. H. Longino to Jackson and Eastern Railway, January 23, 1922. 100 ft. R/W S. $\frac{1}{2}$ of Lot 8, Section 31, Township 5, Range 2. . . . \$1.00

James Hurst to Jackson and Eastern Railway, March 2, 1921, 100 ft. R/W, Lots 1 and 2, east of Jackson and Fannin Public Road, less 4 acres south side Sec. 12, T. 5 N., R. 1 E.	\$1.00
Pink Horn and Betty Horn to Jackson and Eastern Ry., Feby. 25, 1921, 100 ft. R/W, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 34, T. 6, R. 2, E.	\$1.00
Alberta Horn and John Horn to Jackson and Eastern Railway, January 10, 1922, 100 ft. R/W, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Sec. 33, T. 6, R. 2 E., Grantors reserve the right to cultivate the part of the right of way which is not used for railroad purposes, also all timber on the right of way. .	\$1.00
C. B. Hamilton to Jackson & Eastern Ry., April 7, 1921, 100 ft. R/W, S. W. $\frac{1}{4}$ of Section 32, Township 6, N. R. 2, E.	\$1.00
Jimmie Graves and Ellie D. Graves to the Jackson and Eastern Railway, Feb. 24, 1921, 100 ft. R/W East $\frac{1}{2}$ of S. E. $\frac{1}{4}$, less 4 acres middle of east side Section 28, T. 6, R. 2, E. 20 acres in west end of that part of Sec. 27, T. 6, R. 2 E., south of road.	\$1.00
[fol. 1050] J. J. Daniel and S. J. Daniel to Jackson and Eastern Ry. Company, February, 1921, N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Section 27, T. 6, R. 2, E.	\$1.00
E. Q. White and Mrs. E. Q. White to Jackson and Eastern Railway, February, 1921, 100 ft. R/W W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 23, T. 6, R. 2 East.	\$1.00
John Redfearn, Carrier Redfearn, Mrs. Ruth R. Kersh to the Jackson and Eastern Railway, 100 ft. R/W N. E. $\frac{1}{4}$, Section 5, Tp. 6, North, Range 2 East, and E. $\frac{1}{2}$ of Sec. 32 in S. W. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of Section 33, all in Township 6 North, Range 2 East. . . .	\$1.00
J. F. Jones to Jackson and Eastern Railway Company, May 6, 1921, 100 ft. R/W S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, less one acre in S. E. $\frac{1}{4}$ of Section 22, Township 6 North, Range 2 East. Said railroad to be built on the second survey. The Jackson and Eastern Railway Company agrees to locate a station within a quarter of a mile of Liberty Baptist Church.	\$1.00
John C. Batte to Jackson and Eastern Railway, March 2, 1921, 100 ft. R/W S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, Section 7, Township 5 N., R. 2 East, 4 acres south side of Lots 1 and 2, Section 12, T. 5 N., R. 1, E.	\$1.00
Clyde J. Hurst and Mrs. C. J. Hurst to the Jackson and Eastern Railway, March 1, 1921, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 6, T. 5, R. 2 E., N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, Sec. 7, T. 5, R. 2 E., provided the right of way is located within 200 [fol. 1051] ft. of the residence or barn now on the above lands, then the Jackson and Eastern Railway Company agrees to pay reasonable damages to the undersigned grantor	\$1.00

S. J. Taylor, J. B. Ashmore, his wife Eunice Ashmore, March 7, 1921, 100 ft. R/W N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 5, and S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, and S. W. $\frac{1}{4}$, except 9 acres in N. E. Corner of S. W. $\frac{1}{4}$ and East half of S. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Section 6, all in Township 5 North, Range 2 East.	\$1.00
Ella Woods and Henry Woods to Jackson & Eastern Railway, March 18, 1921, 100 ft. R/W W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, and all that part of the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ South of Pelahatchie Creek, in Section 1, Township 6 N., Range 2 East.	\$1.00
Geo. W. Bryant and Charlotte Bryant to Jackson and Eastern Railway Co., March 17, 1921, 100 ft., R/W East $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Section 1, Township 6 N., Range 2 East, N. E. $\frac{1}{4}$ South of Creek and W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, East of Jackson and Fannin Public Road, Sec. 6, Township 6, North, Range 3 East.	\$1.00
M. F. Sanders to Jackson and Eastern Railway Company, May 6, 1921, 100 ft. R/W N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 14, Township 6 North, Range 2, East.	\$1.00
Thos. R. Milner to Jackson and Eastern Railway Company, Feb. 21, 1921, 100 ft. R/W, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Township 6, Range 2 East.	\$1.00
[fol. 1052] Alex Runnell and Nancy Runnell to Jackson & Eastern Railway, February, 1921, 100 ft., R/W S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Section 14, Township 6 N., R. 2 E.	\$1.00
F. M. Roell to Jackson and Eastern Railway Company, March 4, 1921, 100 ft. R/W N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and East $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 12, T. 6, N., R. E., East.	\$1.00
Mary Washington to Jackson and Eastern Railway Company, February, 1921, 100 ft. R/W N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 14, Township 6, Range 2, East.	\$1.00
Henry Woods to Jackson and Eastern Railway Company, March 18, 1921, 100 ft. S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and 13 acres North side of N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Section 14, T. 6 North, Range 2, East.	\$1.00
C. H. Bethune and N. F. Bethune to Jackson and Eastern Railway Company, May 6, 1921, 100 ft., R/W the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, of Section 23, Township 6 North, Range 2, East.	\$1.00
C. H. Bethune and N. F. Bethune to Jackson and Eastern Railway Company, February 22, 1921, 100 ft., R/W S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 23, Township 6, Range 2 East.	\$1.00
Chas. McDonnell, Agent, Gertrude Gale McDonnell, to Jackson and Eastern Railway Co., March 3, 1921, 100 ft. R/W S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, and 3 acres [fol. 1053] N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, west of Jackson and Fannin Public Road, and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and	

S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 6, T. 6, N., R. 3 East, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, and W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 29, T. 7 N. R. 3 East.....	\$1.00
William M. Slade and Jenny Slade to Jackson and Eastern Railway, April 18, 1921, 100 ft., R/W, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, Sec. 30, Twp. 8, North, Range 5 East.....	\$1.00
J. M. Parker, Gertrude Parker to Jackson & Eastern Railway Co., April 15, 1921, 100 ft., R/W, Lots 1 and 2 and 3, North of Deer Creek, all in Sec. 15, Twp. 8 North, Range 5 East.....	\$1.00
J. F. Shoemaker and Jinnie Shoemaker to Jackson and Eastern Railway Company, 100 ft. April 15, 1921, 100 ft. R/W, Lots 1, 2 and 3, South of Little Deer Creek, all in Section 15, Township 8 North, Range 5 East..	\$1.00
John Renfrow to Jackson and Eastern Railway Co., April 15, 1921, 100 ft., R/W, Lot 3, south of Little Deer Creek, in Sec. 15, Twp. 8 North, Range 5, East.....	\$1.00
J. A. Robinson, Mrs. J. A. Robinson, to Jackson and Eastern Railway Company, April 20, 1921, 100 ft. R/W S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 26, and N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Section 25, all in Township 8 North, Range 4 East..	\$1.00
[fol. 1054] George Archie, Freeman Archie to Jackson Railway Company, May 11, 1921, 100 ft. R/W S. E. $\frac{1}{4}$ of Sec. 31, Twp. 8 North, Range 4 East.....	\$1.00
Dan Archie, May Jane Archie to Jackson and Eastern Railway Company, April 1, 1921, 100 ft. R/W, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 32, Township 8 N. R. 4 East.....	\$1.00
Mrs. W. F. Davis, G. P. Davis, to Jackson & Eastern Railway Co., May 3, 1921, 100 ft. R/W, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, Sec. 26, Township 8 North, Range 4 East.....	\$1.00
Lucy Palmer and Mary Boyd to Jackson & Eastern Ry. Co., April 19, 1921, 100 ft., R/W S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 25, Twp. 8, North, Range 4 East.....	\$1.00
Otho Lindsey and Effie McCoy to Jackson and Eastern Railway Co., April 22, 1921, 100 ft. R/W, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 25, Twp. 8, North, Range 4 East.....	\$1.00
Perry Thomas and Johanna Thomas to Jackson & Eastern Ry. April 19, 1921, 100 ft. R/W S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, of Sec. 25, and S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Sec. 24, less 10 acres in southeast corner, all in Twp. 8, Range 4 East	\$1.00
Ed. Myers, Sally Myers to Jackson & Eastern Ry., April 18, 1921, 100 ft. R/W, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 30, Twp. 8, North Range 5 East, and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 25, Twp. 8, North, Range 4, East.....	\$1.00
[fol. 1055] John Myers and Virginia Myers to Jackson & Eastern Railway, April 31, 1921, 100 ft. R/W, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, all in Sec. 26, Twp. 8 North Range 4 East.....	\$1.00

Dave Kersh, Mrs. D. M. Kersh, to Jackson and Eastern Ry. Co., May 12, 1921, 100 ft. R/W, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 33, Twp. 8, North, Range 4 East.....	\$1.00
Henry Simons, Hattie L. Simons to Jackson & Eastern Ry., April 1, 1921, 100 ft. R/W, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and North one-third of N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 33, T. 8 N., R. 4 East	\$1.00
Joe McFarland, Rosamer Gibson to Jackson & Eastern Ry. April 21, 1921, 100 ft. R/W, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, less 15 acres east side and S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, all in Sec. 26., T. 8 North, Range 4 East, S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 27, Twp. 8 North, R. 4, East	\$1.00
Charles Purnell, Sarah Purnell to Jackson and Eastern Railway Company, April 22, 1921, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 26, Twp. 8, North, Range 4 East.....	\$1.00
A. G. Moore, Mrs. A. G. Moore, to Jackson and Eastern Railway Co., April 8, 1921, 100 ft. R/W, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 26, Twp. 8, North, Range 4 East, S. $\frac{1}{2}$ of S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, all in Sec. 27, Twp. 8 North, Range 4, East.....	\$1.00
[fol. 1056] Mrs. J. H. Boyd, Farrall J. Boyd to Jackson and Eastern Ry. Co., April 20, 1921, 100 ft. R/W, 15 acres east side of S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 26, Twp. 8, North, Range 4 East, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 27, and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 34, all in Township 8 North, Range 4 East.....	\$1.00
E. S. Barksdale, Kate W. Barksdale to Jackson and Eastern Railwa-, April 1, 1921, 100 ft. R/W, all in Sec. 6, T. 7, N. Range 4 East	\$1.00
Henry Shurlds, Mrs. Annie Shurlds, Hen Shurlds, his wife, Mrs. Irene Shurlds, to Jackson and Eastern Railway Co., March 25, 1921, 100 ft. R/W, E. $\frac{1}{2}$ of E. $\frac{1}{2}$, Sec. 36, T. 7 N. R. 2 E., S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 31, T. 7 N. R. 3 East	\$1.00
George Hemphill, Cely Hemphill to Jackson & Eastern Ry. March 25, 1921, 100 ft. R/W, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ less 4 acres in S. E. corner, all in Section 22, T. 7, B. R. 3 East.....	\$1.00
J. H. Howie and Virgil Howie to Jackson & Eastern Ry. May 5, 1921, 100 ft. R/W, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 12, Twp. 7, Range 3, East	\$1.00
George Griffith, Annie Griffith, to Jackson & Eastern Railway, April 7, 1921, 100 ft. R/W, N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, and the N. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, all in Sec. 32, Twp. 7 N., R. 3 East	\$1.00
[fol. 1057] J. B. Williamson, Mrs. J. B. Williamson to Jackson & Eastern Ry., March 29, 1921, 100 ft. R. W, E. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, of Sec. 29, T. 7 N. R. 3 East....	\$1.00

D. W. Flowers, Molly Flowers to Jackson & Eastern Ry. March 24, 1921, 100 ft. R/W, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, Sec. 28, T. 7 N. R. 3 East, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ less 20 acres west side, all in Sec. 28, T. 7 N. R. 3 E	\$1.00
H. H. Busick, Mrs. H. G. Busick to Jackson & Eastern Ry. Co., April 6, 1921, 100 ft. R/W, N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, all in Sec. 31, Twp. 7, N. Range 3 East	\$1.00
C. S. Swaggard to Jackson & Eastern Railway Co., March 29, 1921, 100 ft. R/W, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Section 14, T. 7, N. R. 3, East	\$1.00
G. H. Sherrill and Margaret S. Sherrill to Jackson & East- ern Railway Co., March 25, 1921, 100 ft. R/W, W $\frac{1}{2}$ of S. E. $\frac{1}{4}$, and 10 acres S. W. corner of S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 15, T. 7 N. R. 3 East, and 10 acres N. W. corner of N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 22, Twp. 7 N. R. 3 East, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ less 5 acres in south end, Sec. 23, T. 7, N. R. 3, East	\$1.00
[fol. 1058] F. M. Enochs to Jackson and Eastern Ry., April 6, 1921, 100 ft. R/W, S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 23, all in Twp. 7 North and Range 3 East	\$1.00
West Chambers and Malinda Chambers to Jackson and Eastern Railway, March 22, 1921, 100 ft. R/W, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 14, T. 7, N. R. 3 East, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ less 10 acres in the S. W. corner of Sec. 15, and 10 acres in the northeast corner of N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 22 and the N. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, Sec. 23, T. 7 N. R. 3 East, provided said R/W does not run nearer than 300 ft. of the residence now occupied by the grantor.	\$1.00
Victor McLaurin, Anie McLaurin, to Jackson and Eastern Railway, March 28, 1921, 100 ft. R/W, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, of Sec. 12, T. 7, N. R. 3 E., N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 11, T. 7, N. R. 3 East	\$1.00
Jim Hill and Lena Hill to Jackson and Eastern Railway, March 20, 1921, 100 ft. R/W, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 12, T. 7 N. R. 3 East	\$1.00
John Hill to Jackson and Eastern Railway, 100 ft., R/W, March 29, 1921, 100 ft. R/W, N. E. $\frac{1}{4}$ of Sec. 14, T. 7 N. R. 3 East, N. W. $\frac{1}{4}$ of Sec. 13, T. 7 N., R. 3 East, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 12, T. 7 N. R. 3, East	\$1.00
[fol. 1059] J. L. Long, Alma Long to Jackson & Eastern Railway, March 25, 1921, 100 ft. R/W, S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Sec. 21, T. 7 N. R. 3 East, N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and	

W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Section 22, T. 7, N. W. 3 East, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 27, T. 7 N. R. 3 East, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 28, T. 7 N. R. 3 East.	\$1.00
Charlie Hill, Nancy Hill, to Jackson & Eastern Ry., March 29, 1921, 100 ft. R/W, N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, all in Sec. 12 T. 7 N., R. 3 East.	\$1.00
Mrs. M. B. Greenway to Jackson & Eastern Railway Co., May 5, 1921, 100 ft. R/W, S. E. $\frac{1}{4}$ of Sec. 29, and S. W. $\frac{1}{4}$ of Sec. 28, all in Township 7, North, Range 3 East.	\$1.00
John Hill to Jackson and Eastern Railway Co., May 7, 1921, 100 ft. R/W, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 1, Township 7, North, Range 3 East.	\$1.00
J. H. Howie and Virgil Howie to Jackson and Eastern Railway Co., April 5, 1921, 100 ft. R/W, Sec. 1, S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Section 12, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Section 12, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Section 14, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Section 15, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 22, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Section 28, S. W. $\frac{1}{4}$ Section 29, S. E. $\frac{1}{4}$ of Section 32, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, all in Township 7, Range 3 East.	\$1.00
Joe McLaurins to Jackson & Eastern Railway Co., May 7, 1921, 100 ft. R/W, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Section 14, T. 7, North, Range 3 East.	\$1.00

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk.

[fol. 1060] EXHIBIT No. 6 TO THE TESTIMONY OF S. A. NEVILLE

Supplemental Order

At a Session of the Interstate Commerce Commission, Division 4,
Held at Its Office, in Washington, D. C., on the 18th Day of
January, A. D. 1924.

Finance Docket No. 9

Public Convenience Certificate to Jackson & Eastern Railway Company

It appearing, That on July 21, 1921, the Commission issued its report and certificate in the above entitled proceeding, in which certificate it was provided that the construction of the extension of a line of railroad therein authorized should be completed, and the line placed in operation on or before December 31, 1922.

It further appearing, That by supplemental order entered December 29, 1922, the time for completing the construction of said extension was extended to December 31, 1923.

And it further appearing, That for good cause shown the Jackson & Eastern Railway Company has been unable to complete said ex-

tension within the time fixed in said certificate as extended by the supplemental order of December 29, 1922, and has requested that the time for such completion be further extended to December 31, 1925.

[fol. 1061] It is ordered, That the time prescribed in said certificate within which the Jackson & Eastern Railway Company may complete said extension and place it in operation be and it is hereby extended to and including December 31, 1925.

By the commission, Division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1062] EXHIBIT NO. 7 TO S. A. NEVILLE'S TESTIMONY

Interstate Commerce Commission

Bureau of Finance

Washington, D. C.

January 19, 1924.

Mr. S. A. Neville, President and General Manager Jackson & Eastern Railway Company, Meridian, Miss.

DEAR SIR: This will acknowledge receipt of your letter of the 12th instant to the Commission's Secretary enclosing application for extension of time in which to complete the Jackson & Eastern Railway.

For your information I am enclosing a copy of a supplemental order entered by the Commission on January 18, 1924, extending the time for completion to and including December 31, 1925.

Yours very truly, (Signed) Chester D. Mahaffie, Director.

1 encl.

[fol. 1063] EXHIBIT "7" TO THE TESTIMONY OF S. A. NEVILLE

Interstate Commerce Commission

Bureau of Finance

Washington, D. C.

January 19, 1924.

Mr. S. A. Neville, President and General Manager Jackson & Eastern Railway Company, Meridian, Miss.

DEAR SIR: This will acknowledge receipt of your letter of the 12th inst. to the Commission's Secretary enclosing application for extension of time in which to complete the Jackson & Eastern Railway.

For your information I am enclosing a copy of a supplemental order entered by the Commission on January 18, 1924, extending the time for completion to and including December 31, 1925.

Very truly yours, (Signed) Charles D. Mahaffie, Director.

1 Encls.

[fol. 1064] EXHIBIT 8 TO TESTIMONY OF S. A. NEVILLE

Finance Docket 9

Application for the JACKSON & EASTERN RAILWAY COMPANY for a
Certificate of Public Convenience and Necessity

Petition of Carrier for an Amendment or a Modification of the Decision of the Commission Given on the Twelfth Day of July, 1921

Comes now, the Jackson & Eastern Railway Company, herein-after called the Carrier, and respectfully moves and petitions the Commission to reopen its said decision and to amend and modify same so that petitioner may be permitted to present to the Commission its application for authority to issue and sell First Mortgage Bonds authorized to be issued by its stockholders and directors, February 2, 1920, and in support thereof respectfully shows:

1. That on the date last above mentioned the stockholders and directors of the Jackson and Eastern Railway Company duly authorized the issuance and sales of bonds of the par value of \$140,000, to be dated February 2, 1920, and due and payable February 2, 1925, to be secured by first mortgage and all its assets of every kind and description, proceeds of which said bonds were to be used for capital expenditures, and corporate requirements.

[fol. 1065] 2. That prior to the effective date of the Transportation Act of 1920 and before it had been determined by Congress that control over the issuance of securities was to be vested in the Commission said bonds were printed and otherwise prepared to be sold and delivered to purchasers, leaving \$95,000 par value executed and ready to be issued in the treasury of said company.

3. That the Carrier now has an offer for said \$95,000 of bonds at par, and desires to issue and sell bonds for the purposes for which they were originally authorized and intended; i. e., for capital expenditures and corporate requirements, but the decision of the Commission in this proceeding stipulates and provides that the certificate of public convenience and necessity herein authorized to be issued upon the express condition that said Jackson and Eastern Railway Company shall not issue any bonds or any evidence of indebtedness for the construction of said extension or for the refunding of any obligations arising out of such construction, directly or indirectly, for a period of Five years from the date upon which actual construction of said extension shall commence, and that such extension shall be completed and placed in operation on or before December 31, 1922." That said prohibition has the effect of making it impossible for the carrier to exercise the right and privilege of extending its line as is authorized in this proceeding, and, in fact, thus nullifies said authority conferring said certificate of public convenience and necessity, because it is impossible for the carrier to construct the additional or extended line of railroad which it proposes [fol. 1066] to construct unless it shall be permitted to issue bonds or

other evidence of indebtedness such as the Commission might authorize on proper application, but for the prohibition hereinafter set forth.

4. The carrier shows to the Commission that unless it shall be permitted to construct its railroad in the usual way and without such restrictions as are imposed in the certificate of public convenience and necessity, its owners will be grievously injured and the public deprived of the benefits of the proposed transportation, for that the carrier's property was acquired long before the enactment of the Transportation Act of 1920, under the plan and purpose of being extended as proposed in the application for certificate of public convenience and necessity; and in pursuance of such plan a charter was procured from the State of Mississippi under the terms of which the carrier was authorized to construct the road as proposed in its application for a certificate of public convenience and necessity. Bonds were issued and a large amount of money expended in making surveys and doing other preliminary work, all of which had been done prior to the passage of the Transportation Act of 1920. That the property now belonging to the carrier and in operation as a part of the transportation system, was acquired under the plan and purpose of being extended, and large expenditures were made and preliminary plans affected and carried out, which must be now abandoned, with substantial loss of the owners, and a denial of needed [fol. 1067] transportation facilities to the public, if the certificate of public convenience and necessity shall not be so amended as to make it possible for the carrier to incur indebtedness through the issuance of securities to such an extent as the Commission may hereafter approve upon proper application and upon a complete consideration of all the facts and circumstances which the carrier expects to be able to present in support of such an application.

Wherefore, the carrier prays that if necessary it be heard further as to the effect of said restriction and that said order be amended and modified by excluding the prohibitory clause herein referred to, by amendment in such other way as the Commission may deem proper, in order that the certificate of public convenience and necessity heretofore granted may be utilized and made effective by the carrier, and injury to the carrier and the public thus avoided.

Jackson and Eastern Railway Company, by ———, President.
 Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk,
 by W. J. Brown, D. C.

[fol. 1068] EXHIBIT 9 TO S. A. NEVILLE'S TESTIMONY

Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION
HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 3RD DAY
OCTOBER, A. D. 1921.

Finance Docket No. 9

In the Matter of the Application of THE JACKSON & EASTERN RAILWAY COMPANY for a certificate of Public Convenience and Necessity.

It appearing, That on July 12, 1921, the Interstate Commerce Commission, by Division 4, issued its certificate of public convenience and necessity in the above entitled proceeding, such certificate containing the condition that said Jackson & Eastern Railway Company shall not issue any bonds, or other evidence of indebtedness for the construction of said extension, or for the refunding of any obligations arising out of said construction, directly or indirectly for a period of five years from the date on which actual construction of said extension shall commence; that on August 16, 1921, said applicant filed its petition for the reopening of said proceeding, the amendment and modification of said certificate with respect to said condition, and said petition having been duly considered.

It is ordered, That this proceeding be and the same is hereby reopened for the submission of such further evidence and argument [fol. 1069] said applicant may desire to present, with respect to amendment and modification of said certificate, as above set forth.

By the Commission:

George B. McGinty, Secretary. (Seal)

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk
by W. J. Brown, D. C.

[fol. 1070] EXHIBIT 10 TO TESTIMONY OF S. A. NEVILLE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1530

In the Matter of the Application of THE JACKSON AND EASTERN RAILWAY COMPANY for Authority to Issue First Mortgage Bonds

Submitted October 3, 1921. Decided October 5, 1921

Authority granted to issue \$93,000 of first mortgage 8 per cent bonds and to sell said bonds at not less than par, for the purpose of reimbursing applicant's treasury for expenditures heretofore made for additions and betterments and not yet capitalized.

Geo. B. Neville for applicant.

Report of the Commission

Division 4, Commissioners Meyer, Daniels, Eastman and Potter

By DIVISION 4:

The Jackson and Eastern Railway Company, a common carrier by railroad engaged in interstate commerce, has duly applied for authority under Section 20a of the interstate commerce commission [fol. 1071] to issue \$93,000 of its first mortgage 6 per cent bonds, and to sell them at not less than par for the purpose of reimbursing its treasury for expenditures made for additions and betterments prior to July 1, 1921, which have not yet been capitalized. No objection has been offered to the granting of the application.

By the provisions of the applicant's first mortgage dated February 2, 1920, made to the Mercantile-Union Trust Company, the applicant is authorized to issue bonds to the amount of \$140,000 bearing interest at the rate of 6 per cent per annum, and maturing February 2, 1925, for the purpose, among others, of reimbursing its treasury for expenditures which may have been made for additions and betterments to the operating property. Of this amount \$45,000 of bonds have already been issued.

The applicant represents that from the beginning of construction up to January 1, 1921, it had invested in road and equipment \$237,891.67, and between January 1, 1921, and July 1, 1921, \$6,604.94, totalling \$244,496.61. Its present capitalization is \$145,000, leaving \$99,496.61. Its present capitalization is \$145,000, leaving \$99,496.61 uncapitalized. Our order in Finance Docket No. 9 issued July 12, 1921, however, forbids the issue of bonds or other evidence of indebtedness for the construction of an extension to applicant's existing line for a period of five years after commencement of construction. Of the amount invested it appears that \$6,804.94 was for this extension. The applicant is therefore entitled to issue

bonds only to the extent of approximately \$93,000 for additions and betterments to its existing line.

[fol. 1072] We find that the proposed issue and sale of first mortgage bonds by the applicant to the extent of \$93,000 (a) are for lawful objects within its corporate purposes, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) are reasonably necessary and appropriate for such purposes.

An appropriate order will be entered.

[fol. 1073]

Order

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, DIVISION 4, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 5TH DAY OF OCTOBER, A. D. 1921.

Finance Docket No. 1539

In the Matter of the Application of THE JACKSON AND EASTERN RAILWAY COMPANY for Authority to Issue First Mortgage Bonds

Investigation of the matters and things involved in this proceeding having been had, and said Division having, on the date hereof made and filed a report containing its findings of fact and conclusion thereon, which report is hereby referred to and made a part hereof

1. It is ordered, That the Jackson and Eastern Railway Company be, and it is hereby authorized to issue not exceeding \$93,000 aggregate principal amount, of its first mortgage bonds, under and pursuant to, and secured by the first mortgage dated February 2, 1920, made by the applicant to the Mercantile Union Trust Company to bear interest at the rate of 6 per cent per annum, payable semi-annually on January 1, and July 1, in each year, and to mature February 2, 1925; said bonds to be sold at not less than par, the proceeds of such sale to be used solely for the purposes set forth in our report.

[fol. 1074] 2. It is further ordered, That except as herein authorized, said bonds shall not be sold, pledged, repledged or otherwise disposed of by the applicant, unless and until so authorized by the Commission.

3. It is further ordered, That the applicant shall within 10 days thereafter report to this Commission all pertinent facts relating to the issue and sale of said bonds; such reports to be signed and verified by an executive officer having knowledge of the facts.

4. And it is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said bonds or interest thereon, on the part of the United States.

By the Commission, Division 4:

George B. McGinty, Secretary. (Seal)

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk,
by W. J. Brown, D. C.

[fol. 1075] EXHIBIT No. 11 TO THE TESTIMONY OF S. A. NEVILLE

Certificate

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 12TH DAY OF JULY, A. D. 1921

Finance Docket No. 9

In the Matter of the Application of THE JACKSON & EASTERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity

Investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require or will require the construction of an extension of the line of the Jackson & Eastern Railway from Sebastopol to Jackson, through the counties of Scott, Leake and Rankin, in the State of Mississippi, a distance of approximately 61 miles.

It is ordered, That said Jackson & Eastern Railway be, and it is hereby authorized to construct said extension: Provided, however, that this certificate is issued upon the express condition that said Jackson & Eastern Railway Company shall not issue any bonds, or other evidence of indebtedness, for the construction of said extension [fol. 1076] or for the refunding of any obligations arising out of such construction, directly or indirectly, for a period of five years from the date upon which actual construction of said extension shall commence; and that such extension shall be completed and placed in operation on or before December 31, 1923.

It is further ordered, That said Jackson & Eastern Railway Company be, and it is hereby, permitted to retain for a period of ten years from the date on which said extension shall be placed in operation, but not extending beyond December 31, 1932, all of the earnings derived from such extension: Provided, however, that this permission is expressly conditioned upon the keeping of applicant's accounts in such manner that the earnings derived from such extension can be segregated from those of the applicant's other line or lines, and that said extension shall be completed and placed in operation on or before December 31, 1922, as aforesaid.

It is further ordered, That said Jackson & Eastern Railway Company, when filing schedules establishing rates and fares to and from

points on said extension, shall in such schedules make special reference to this certificate by title, date, and docket number.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1077] EXHIBIT A-1 TO TESTIMONY OF S. A. NEVILLE

Interstate Commerce Commission

Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of the order of the Commission entered November 29, 1920, in Finance Docket No. 9, in the Matter of the Application of the Jackson & Eastern Railway Company for Certificate of Public Convenience and Necessity, the original of which is now on file and of record in the office of this Commission. Copy of said order was served upon D. L. Younger, Washington Representative of the Alabama Vicksburg Railway Company, on November 30, 1920, the record for which is now on file and of record in the office of the Commission.

In testimony whereof, I have hereunto subscribed my name, affixed the seal of the Commission, this 22nd day of January, A. D. 1924.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 1078]

Order

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, IN SESSION 4, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 22ND DAY OF NOVEMBER, A. D. 1920.

Finance Docket No. 9

In the Matter of the Application of THE JACKSON & EASTERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity to Construct a Line of Railroad in Mississippi

Application No. 1, Ce-2

It appearing that on June 10, 1920, the Jackson & Eastern Railway Company filed with the Commission its application for a Certificate that the present or future convenience and necessity require or will require the construction by the applicant of a line of road from Sebastopol, in Scott County, through the Counties of Scott, Leake, Rankin and Hinds, to the City of Jackson, all in the State of Mississippi: that at the request of this Commission a hearing was held before the Mississippi Railroad Commission at Jac

Mississippi, on the 3d day of August, 1920, and that said Mississippi Railroad Commission thereafter transmitted to this Commission a transcript of the record made at such hearing, together with its recommendations, and

It further appearing that a further hearing in the matter is necessary in order to receive additional evidence not presented at the hearing above referred to:

[fol. 1079] It is ordered that said matter be assigned for further hearing before the Mississippi Railroad Commission, at its office in Jackson, Mississippi, on the 15th day of December, 1920, at 9 o'clock a. m. at which time and place interested parties may appear and be heard in the premises:

It is further ordered that Examiner A. R. Mackley be and he hereby is assigned to attend and represent this Commission at such further hearing:

It is further ordered that notice of said hearing be given to the general public by posting a copy of this order in the office of the Commission's Secretary, at Washington, D. C., and that such notice be given to the Governor of the State of Mississippi and to the Mississippi Railroad Commission, by sending to each of them by registered mail a copy of this order; and

It is further ordered that a copy of this order be served upon Mr. George B. Neville, Attorney for applicant, Meridian, Mississippi, and upon Alabama & Vicksburg Railway Company, Illinois Central Railroad Company, Gulf & Ship Island Railroad Company, Yazoo & Mississippi Valley Railroad Company, Gulf, Mobile & Northern Railroad Company, New Orleans Great Northern Railroad Company.

By the Commission, Division 4.

(Signed) George B. McGinty, Secretary Interstate Commerce Commission.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1080] EXHIBIT A-3 TO TESTIMONY OF S. A. NEVILLE

Interstate Commerce Commission

Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of applications filed June 10, 1920, and July 17, 1920, in Finance Docket No. 9, In the Matter of the Application of the Jackson & Eastern Railway Company for Certificates of Public Convenience and Necessity, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 22nd day of January, 1924.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 1081] Application Jackson and Eastern Railway Company for permission to extend its railroad from Sebastopol, Scott County, through Scott, Leake and Rankin Counties into the City of Jackson, Hinds County, Mississippi, as required by paragraph 18, Section one, of the Interstate Commerce Act as amended by the Transportation Act of 1920.

(1) The full name and post office address of the applicant, carrier, its president, its secretary, and its attorney: Jackson and Eastern Railway Company, Meridian, Mississippi; S. A. Neville, President; Catherine Sullivan, Secretary; Neville and Stone, Attorneys.

(2) Under the laws of what Government, State, or Territory applicant was organized: Under the laws of the State of Mississippi.

(3) That the making and filing of the application has been approved at a meeting of the stockholders or directors of applicant carrier, and when and where such action was taken: Approved at a meeting of the stockholders and directors held in the general office at Meridian, Mississippi, on the 7th day of June, 1920.

[fol. 1082] (4) The name of each State and of each County or Parish therein in which such additional or extended line of railroad is proposed to be constructed or operated, or in which all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned: Beginning at the end of the present completed construction—Sebastopol, Scott County, Mississippi,—traversing in a westerly direction through Scott, Leake and Rankin Counties into Jackson—Hinds County—all in Mississippi.

(5) The location, route or routes and terminal of the line proposed to be constructed, operated or abandoned: To construct a main line of railroad beginning at the present terminus, Sebastopol, Scott County, Mississippi, through the Counties of Scott, Leake and Rankin, into Jackson, Hinds County, Mississippi.

(6) A brief statement of the reasons relied upon to show that the present or future public convenience and necessity require or will require the construction or operation, or construction and operation of such additional or extended line of railroad or permit such abandonment: In the year 1911, S. A. Neville, President of this Company began the construction of a railroad from Meridian, Mississippi, in a northwesterly direction to intersect the Illinois Central Railroad at [fol. 1083] some point. By reference to the map you will notice this is an undeveloped country with splendid natural resources, consisting of timber and farms inaccessible, nor served at present by common carrier railroad.

The writer constructed during 1911-12 the Meridian and Memphis Railway Company from Meridian to Union, Mississippi, later selling the same to the Gulf, Mobile & Northern Railroad Company; in the year 1914-15 I continued the construction westwardly beginning operation as a common carrier in November, 1916.

During the war no effort was made to continue the construction but now that the war is over it is desired to complete the original plan of building a railroad to serve the public in this territory.

(7) What hearing, if any, applicant desires in the matter of its application: The applicant does not desire any hearing, unless it is desired by the Commission as the applicant feels that from the showing made that this construction was begun prior to the passage of the above act and that part of the construction has already been completed and the road in operation it feels that upon the showing made that no further hearing will be necessary, unless requested by the Commission.

(Signed) S. A. Neville, President.

Verification

[fol. 1084] STATE OF MISSISSIPPI,
Lauderdale County:

S. A. Neville makes oath and says that he is the President of the Jackson and Eastern Railway Company, that he has carefully examined each and all of the statements contained in the foregoing application, that they are true and correct to the best of his knowledge and belief.

(Signed) S. A. Neville.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this — day of June, 1920. ———. My commission expires — —, —.

[fol. 1085] Endorsed: July 17, 1920. 504,895.

To File in Finance Docket No. 9.

Application of the Jackson and Eastern Railway Company to the Interstate Commerce Commission for a certificate of public convenience and necessity and permission to retain the excess earnings as provided for in paragraphs 18 to 22, inclusive, of Section one of the Interstate Commerce Act as amended by Section 402 of the Transportation Act, 1920, and also in paragraph 18, Section 15a, of the Interstate Commerce Act as amended by Section 422 of the Transportation Act, 1920.

(1) The full name and post office address of the applicant, its president, its secretary and its attorney: The Jackson and Eastern Railway Company, Meridian, Mississippi; S. A. Neville, President, Meridian, Mississippi; Catherine Sullivan, Secretary, Meridian, Mississippi; Neville and Stone, Attorneys, Meridian, Mississippi.

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(2) Under the laws of what Government, State or Territory applicant was organized: Under the laws of the State of Mississippi.

(3) That the making and filing of the application has been approved at a meeting of the stockholders or directors of applicant carrier, and when and where such action was taken: July 8th, 1920, [fol. 1086] at a meeting of the directors in the general offices, Meridian, Mississippi.

(4) The name of each State and of each County or Parish therein in which such additional or extended line of railroad is proposed to be constructed or operated, or in which all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned: Now operating in Newton, Neshoba, and Scott Counties; to be constructed through Scott, Leake, Rankin and into Hinds Counties, all in the State of Mississippi.

(5) The location, route or routes, and terminal of the line proposed to be constructed, operated or abandoned: See map attached.

(6) A brief statement of the reasons relied upon to show that the present or future convenience and necessity require or will require the construction or operation, or construction and operation of such additional or extended line of railroad, or permit of such abandonment: The distance this undeveloped territory now is from railroads; the immense amount of forest products and the inability of farmers to get fertilizer and to market their crops; the highways are not improved and it is hard to get mail over roads in certain seasons. [fol. 1087] This present construction was begun prior to war and different interests purchased timber along proposed route expecting rail facilities and they will suffer heavy loss unless provided as promised.

(7) What hearing, if any, applicant desires in the matter of its application: None unless so desired by the Commission. If so, our President will gladly appear before your Honorable body.

STATE OF MISSISSIPPI,

County of Lauderdale:

S. A. Neville, makes oath and says that he is the President of the Jackson and Eastern Railway Company; that he has been authorized by the Board of Directors of said Jackson and Eastern Railway Company to make and file with the Interstate Commerce Commission the foregoing return in response to the inquiry of said Commission in respect to its application designated as No. I. C. C. 2 of May 19, 1920, for a certificate of public convenience and necessity in connection with the proposed permission to extend its railroad, also for a certificate of public necessity and permission to retain its excess earnings, that he has carefully examined all of the statements and all of the papers, maps and profiles referred to therein and which are attached thereto and made part thereof; that he has knowledge of

[l. 1088] the matters therein set forth and that all such statements made and matters set forth in said return are true and correct.

(Signed) S. A. Neville.

Subscribed and sworn to before me, a Notary Public in and for the State and County aforesaid, this — day of July, 1920. —, Notary Public. My commission expires —, —.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, W. J. Brown, D. C.

[l. 1089] EXHIBIT D 1 TO THE TESTIMONY OF LARZ A. JONES

Interstate Commerce Commission
Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of complaint filed December 10, 1921, and of answer of defendant filed January 17, 1922, in case No. 13361, Jackson and Eastern Railway Company v. Alabama and Vicksburg Railway Company, the originals which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the seal of said Commission this the 6th day of July A. D. 1922.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[l. 1090] Endorsed: December 10, '21. 754,977. Filed Dec. 10, 1921.
File and Serve.

INTERSTATE COMMERCE COMMISSION

Docket No. 13361

JACKSON & EASTERN RAILWAY CO.

v.

ALABAMA & VICKSBURG RAILWAY CO.

Application of the Jackson and Eastern Railway Company to the Interstate Commerce Commission

The application of the above named applicant respectively shows:

1. That the applicant is a corporation organized under the laws of the State of Mississippi, with headquarters and postoffice at Meridian,

Mississippi; is a common carrier, engaged in the transportation of passengers and property wholly by railroad, between points in the State of Mississippi, and is subject to the provisions of the Interstate Commerce Act.

2. That the defendant, the Alabama and Vicksburg Railway Company is a common carrier, engaged in the transportation of passengers and property wholly by railroad, between points in the State of Mississippi, and is subject to the provisions of the Interstate Commerce Act.

3. That the applicant is authorized by Finance Docket Number 9 to extend its line of railroad from Sebastopol, Mississippi, to Jackson, Mississippi, and that with said docket there are filed maps and details describing and locating the said extension, and that the said applicant is now at work building and constructing the said extension, as provided for in said Finance Docket Number 9; that the record in said matter will show that it is the purpose of the applicant to connect with the Alabama and Vicksburg Railway Company at a point near to and East of the Pearl River Bridge of the said Alabama and Vicksburg Railway Company, as shown on said map; this applicant states and shows that it is its desire to connect with the said Alabama and Vicksburg Railway and interchange freight at said junction, and that upon the completion of said construction by the applicant between Sebastopol, Mississippi, and Jackson, Mississippi, applicant desires to use the tracks of the said Alabama and Vicksburg Railway Company, between the said point of connection East of the Pearl River Bridge, as shown by said map, and a point on the West side of the said Pearl River, on Commerce Street, in the City of Jackson, Mississippi, at which point it is the purpose of this applicant to branch off from said main line of the said Alabama and Vicksburg Railway Company to the tracks of the New Orleans Great Northern Railroad Company, as now located on said Commerce Street.

4. Your applicant states and shows that it has applied to the said Alabama and Vicksburg Railway Company for a physical connection at said point, and also for the use of its main line between the points above described, and that the said Alabama and Vicksburg Railway Company refuses to consent for this applicant to either connect with its said main line at said point, or to use its said track between said points.

[fol. 1092] 5. Applicant further states and shows that it will be to the public interest for said applicant to connect with the said Alabama and Vicksburg Railway at said point, and to use the main line of said Alabama and Vicksburg Railway Company between the points above described; applicant further states and shows that the use of said track by applicant will not substantially impair the ability of the Alabama and Vicksburg Railway Company to handle its own business.

6. Applicant further states and shows that under said Finance Docket Number 9, it must complete its extension from Sebastopol

Mississippi, to Jackson, Mississippi, by January 1st, 1923, and that in order to comply with the order of the Commission in reference to said extension it will be necessary for it to carry on its construction from both ends of said extension, and that it will be physically impossible for it to begin work at the Jackson, Mississippi, end until said physical connection with the Alabama and Vicksburg Railway has been made; at the present time the work on said extension is being carried on only from the Sebastopol end towards Jackson; applicant further states and shows that the facilities now owned by the said Alabama and Vicksburg Railway Company between the said point of connection, from said point on Commerce Street, in the City of Jackson, Mississippi, on the West side of Pearl River, are ample and adequate for its own business and also for the uses to which applicant desires to enjoy jointly with the said Alabama and Vicksburg Railway Company; applicant further shows that should it undertake to provide its own and separate entrance into [fol. 1093] Jackson, Mississippi, it would be a duplication of facilities, and contrary to the spirit of the Transportation Act, and would be a needless and useless expenditure in capitalization, and would be an added burden to shippers that it would serve, as well as to this applicant, which is now undertaking to serve the public in said territory.

7. This applicant further shows that this application is made in accordance with Section 1, Paragraph 9, and Section 3, Paragraphs 3 and 4 of the Interstate Commerce Act as amended February 28, 1920.

8. Applicant further states and shows that it is its purpose to use the terminals of the New Orleans Great Northern Railroad Company at Jackson, Mississippi, upon the completion of the said extension from Sebastopol, Mississippi, to said point of connection with the said Alabama and Vicksburg Railway, and that it is its purpose to use the tracks of the said New Orleans Great Northern Railway Company from said point on Commerce Street in the City of Jackson, Mississippi, West of Pearl River, to the terminals of the said New Orleans Great Northern Railroad Company, at Jackson, Mississippi.

Wherefore this applicant prays for an order from the Interstate Commerce Commission, authorizing, directing and requiring a physical connection on the part of this applicant with the main line of the said Alabama and Vicksburg Railway Company at the point above described, East of Pearl River, and also authorizing, directing [fol. 1094] and requiring the said Alabama and Vicksburg Railway Company to grant to this applicant the right to use that portion of the main line of the said Alabama and Vicksburg Railway Company between the two points above described, for the purpose of running its engines, trains and cars over said portion of said main line of the said Alabama and Vicksburg Railway Company from said point of connection East of Pearl River, to said point on Commerce Street West of Pearl River, in Jackson, Mississippi, and

that the compensation and charges which this applicant should pay to the said Alabama and Vicksburg Railway Company for said physical connection, and for the above mentioned use of its main line, be fixed by the Interstate Commerce Commission, in order that the certificate of public convenience and necessity heret-fore granted to applicant by the Interstate Commerce Commission may be utilized and made effective by this applicant.

Jackson and Eastern Railway Company, by S. A. Neville,
President. Neville & Stone, General Attorneys, Meridian,
Mississippi.

Endorsed: Originally Received November 25, 1921. Returned
for Correction December 5, 1921.

[fol. 1095] Endorsed: Filed Jany. 17, 1922. Interstate Commerce
Commission.

INTERSTATE COMMERCE COMMISSION

Docket No. 13361

JACKSON AND EASTERN RAILWAY COMPANY

versus

THE ALABAMA AND VICKSBURG RAILWAY COMPANY

On Application of Jackson & Eastern Railway Company for Connection with the Alabama and Vicksburg Railway Company and Utilization of Bridge and Other Facilities of the Alabama and Vicksburg Railway Company.

Now comes The Alabama and Vicksburg Railway Company, and for answer to the application herein filed by the Jackson and Eastern Railway Company on the 10th day of December, 1921, and served upon The Alabama and Vicksburg Railway Company on December 28th, 1921, with respect, shows:

1. The allegations of Article 1 of the application are admitted.
2. The allegations of Article 2 of the application are admitted.
3. The allegations of Article 3 of the application are denied, and the facts averred to be that under date of July 12, 1921, this Commission handed down its opinion in the proceeding entitled "Finance [fol. 1096] Docket No. 9 in the matter of the application of the Jackson and Eastern Railway Company for a certificate of Public Convenience and Necessity," attached to which was its certificate issued the same day, which certificate read in part as follows:

"It is ordered, that said Jackson and Eastern Railway Company be, and it is hereby, authorized to construct said extension: Provided, however, that this certificate is issued upon the express condition that said Jackson and Eastern Railway Company shall not issue any

bonds, or other evidence of indebtedness, for the construction of said extension or for the refunding of any obligations arising out of such construction, directly or indirectly, for a period of five years from the date upon which actual construction of said extension shall commence; and that such extension shall be completed and placed in operation on or before December 31, 1922."

That thereafter the said Jackson and Eastern Railway Company filed with this Commission on August 16th, 1921, its application for modification of the decision handed down on July 12, 1921, and herein above referred to, and that said application for said modification is still pending before this Honorable Body, the matter being now held in abeyance with a letter addressed to the Director of Finance of the Interstate Commerce Commission, dated November 14, 1921, by Mr. S. A. Neville, President of the Jackson and Eastern Railway Company;

[Col. 1097] That notwithstanding the facts above stated, there has been published in the public press at Jackson under date of December 8th, 1921, a letter which respondent is informed and believes was written by President Neville of the Jackson and Eastern Railway Company, and which reads, as published in the press, as follows:

"I have completed and now have in operation 14 miles of the Jackson and Eastern Railway, extending from Union, Mississippi, to Sebastopol, Mississippi. I have completed the survey of the line from Sebastopol to Jackson, Mississippi, and have acquired practically all of the right of way of the proposed extension and have so about completed the construction of five miles of the railroad west of Sebastopol. It is my purpose to complete the construction of the road from Sebastopol into Jackson by January 1, 1923, and in order to complete it by that time, it is deemed advisable to work from both ends.

"The railroad has been declared a public necessity by the Interstate Commerce Commission and permission for its building. There is a total bond issue of \$140,000.00 authorized against the railroad. These bonds are secured by a first lien on the 14 miles of railroad now in operation, and will be first lien on all of said railroad when built from Sebastopol to Jackson.

[Col. 1098] "With the view of completing the road within the time mentioned, I desire to submit the following proposal, through you, to the citizens and business interests of Jackson, Mississippi:

"If the citizens and business interests of Jackson, Mississippi, will purchase \$93,000.00 of the above mentioned first mortgage bonds of the Jackson & Eastern Railway Company, authorized to be issued by the Interstate Commerce Commission, said Company agrees to begin the construction of the Jackson & Eastern Railway at or near Curans crossing of the Alabama and Vicksburg Railway in Rankin County, Mississippi, within 7 days from the date bonds are subscribed for, and to continue the construction thereof along the route now surveyed, with reasonable diligence in a northeastwardly direction from Curans crossing, and complete and put in operation 11 miles of said railroad

extending along the route as surveyed from the point of beginning on or before the 1st day of September, 1922. I also agree to construct from Sebastopol one mile west of railroad for each mile constructed out of Jackson.

"The Jackson and Eastern Railway Company further agrees that the proceeds of the bonds may be deposited with a Trustee and paid out on the pay roll of the railroad company, and for material used in the construction of said railroad from time to time on the Jackson end as the work progresses. The amount paid from time to time to be determined by the estimate of the engineer of the railway company, or the estimate of an engineer to be selected by your committee. [fol. 1099] "If, for any reason, the work is not begun within seven days from the date said bonds are subscribed for, the Trustee may return to the purchasers of said bonds the purchase money paid therefor and return the bonds to the railroad. Or, if for any reason, after construction is begun, the work is not pushed with reasonable diligence, the Trustee may return to the purchasers of said bonds the proceeds thereof to the extent then in its hands, but hold said bonds to secure the sums which it may have paid out on account of the construction of said railroad.

"It is further understood and agreed that the Trustee is to make no disbursements from the proceeds of said bonds until the Committee is satisfied that the Jackson and Eastern Railway Company has been granted a connection with the Alabama and Vicksburg Railway Company and a right of entry into Jackson by the Interstate Commerce Commission, or it has secured such permission from the Alabama and Vicksburg Railway Company and the New Orleans Great Northern Railroad Company.

"Of course, it is understood that the work beyond the eleven miles hereinbefore mentioned, and between this and Sebastopol, is to be pushed with reasonable diligence, and the railroad completed and put in operation from Union to Jackson by January 1st, 1923."

That, while it is a fact that Finance Docket No. 9 shows that it is [fol. 1100] the purpose of the Jackson and Eastern Railway Company to connect with the Alabama and Vicksburg Railway Company at a point near to and east of the Pearl River Bridge of said The Alabama and Vicksburg Railway Company, as shown on said map, it is also a fact that, in view of the many objections and dangers attendant upon such a connection, The Alabama and Vicksburg Railway Company voluntarily, and without being cited, filed with this Commission under date of October 26, 1921, its objections to such a connection, the receipt of which objections were acknowledged by the Secretary of the Commission under date of November 2nd, 1921, and that said objections are on file in said finance docket at this time, and read as per copy of same attached hereto as Exhibit 1;

That at no time prior to the filing of the present application has the Jackson and Eastern Railway Company ever applied to The Alabama and Vicksburg Railway Company for the use of the tracks of said road between the designated points of connection east of Pearl River Bridge and a point on the west side of Pearl River

a Commerce Street in the City of Jackson; to the contrary, applicant, through its President, has specifically disclaimed to The Alabama and Vicksburg Railway Company any such intention.

4. In answer to Article 4 respondent admits that the Jackson and Eastern Railway Company applied to it for a physical connection with its line at Curans Crossing, and avers that a connection at Curans Crossing should not be permitted by this Honorable body for [Vol. 1101] the reasons fully set out in its letter to the Interstate Commerce Commission of October 26th, 1921, annexed hereto as Exhibit 1, and made part hereof as if herein set out in extenso.

Further answering Article 4, respondent denies absolutely that the applicant at any time prior to the filing of the present application made to it any application or gave to it any notice of its desire or intention to use the main line of The Alabama and Vicksburg Railway Company between the points described in the application, said question having been, for the first time, raised by applicant in the present proceeding; the truth and fact being that upon inquiry by The Alabama and Vicksburg Railway Company the President of the Jackson and Eastern Railway Company stated that it was not the intention of the Jackson and Eastern Railway Company to use the bridge or tracks of The Alabama and Vicksburg Railway Company, but that it was the desire of the Jackson and Eastern Railway Company to interchange its freight and passenger business originating at or destined to Jackson or beyond with the Alabama and Vicksburg Railway Company at the point of connection asked for.

5. The allegations of Article 5 of the application are denied and the facts averred to be that it will not be to the public interest for applicant to connect with respondent at the point designated, but will be detrimental, in a high degree, to the public interest.

Respondent further shows that the use of the tracks mentioned in the application will substantially impair the ability of The Alabama and Vicksburg Railway Company to handle its own business.

[Vol. 1102] 6. Respondent denies the allegations of Article 6 as to the date of completion of the applicant's road and the necessity for construction work at both ends, for lack of information, and further answering such article, denies specifically that its facilities are ample and adequate for its own business and much less also to the uses for which applicant desires to place them jointly with it, and denies that a duplication of facilities, contrary to the spirit of the Transportation Act of 1920, and a needless and useless expenditure and an added burden to shippers or the applicant, would arise should applicant not be permitted to utilize respondent's facilities, it compelled to provide its own facilities.

7. The allegations of Article 7 are denied.

8. The allegations of Article 8 of the application are denied, and respondent avers that it is informed by the Executive Officers of the New Orleans Great Northern Railroad Company that no negotiations

have been had with the Jackson and Eastern Railway Company looking to the use by the former company of any of the property or facilities of the New Orleans Great Northern Railroad Company in Jackson, Mississippi, and that it is not the purpose of the New Orleans Great Northern Railroad Company to permit such user.

Respondent further denies that the New Orleans Great Northern Railroad Company has any tracks in the City of Jackson, except a [fol. 1103] short detached side track built many years ago which is not connected with any other track or their own, and which has never been used for transportation purposes, and states that the New Orleans Great Northern Railroad Company has no terminals at Jackson, Mississippi, but uses the terminals of the Illinois Central Railroad Company.

Wherefore respondent prays that the application of the Jackson and Eastern Railway Company may be dismissed at its cost and for other and further orders as may be necessary in the premises, and for general relief.

The Alabama and Vicksburg Railway Company, by S. A. Neville, President. J. Blanc Monroe, D. Lynch Younger, Attorneys.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1104] EXHIBIT D TO THE TESTIMONY OF LARZ A. JONES

Interstate Commerce Commission

Office of the Secretary

Washington

George B. McGinty, Secretary

TAG:ARH.

August 4, 1922.

Mr. J. Blanc Monroe, General Counsel, c/o Bozeman & Cameron, Meridian, Miss.

DEAR SIR: Replying to letter of even date from D. Lynch Younger, respecting the status of complaint brought by the Jackson & Eastern Railway Company against the Alabama & Vicksburg Railway Company, Docket No. 13363, I would advise that by letter dated February 22, 1923, S. A. Neville, President & General Manager of the Jackson & Eastern Railway, requested the Commission that this proceeding be held in abeyance pending determination by the Supreme Court of the State of Mississippi of the injunction proceeding and condemnation proceeding brought by the Alabama and Vicksburg Railway Company and the Jackson and Eastern Railway Company, respectively, in connection with the effort of the Jackson

and Eastern Railway Company to secure a switching connection with the Alabama & Vicksburg Railway Company.

You are further advised that no hearing has been held by the Commission in Docket No. 13361. No determination has been made [fol. 1105] with respect to prayers of the complaint.

(Signed) Yours very truly, A. Holmead, Acting Secretary.

Copy to Mr. D. Lynch Younger, Commerce Attorney, 317 Munsey Bldg., Washington, D. C.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1106] EXHIBIT I TO THE TESTIMONY OF L. A. JONES

October 26, 1921.

The Interstate Commerce Commission, Washington, D. C.

Attention of Mr. Geo. B. McGinty

GENTLEMEN:

In re Jackson & Eastern R. R. Co.

The Jackson & Eastern Railroad Company, through Mr. S. A. Neville, its President, has notified the Alabama & Vicksburg Railway Company of its desire to establish a track connection between the Alabama & Vicksburg Railway Company and the proposed line of the Jackson & Eastern Railroad Company, just outside of the City of Jackson, Mississippi, and just across the bridge of the Alabama & Vicksburg Railway Company from Jackson.

The connection point tentatively suggested by the representative of the Jackson & Eastern Railroad Company presents so very many difficulties that it seems desirable for the Alabama & Vicksburg Railway Company, at this time, before any purchase or acquisition of right of way has been made by the Jackson & Eastern Railroad Company to point out those difficulties and to indicate the objections of the Alabama & Vicksburg Railway Company to a track connection at the point in question. The principal objections can be summarized as follows:

At the Proposed Point of Connection Both Tracks Will Be Comparatively Sharp Curves and the Curves of the Two Tracks Will Be Opposite Curves

[fol. 1107] A connection on a curve of this sort is objectionable for the following reasons:

a. It is dangerous because the views of the train crews approaching the point of connection will be necessarily impeded, thereby increasing the chances of accident.

b. Railroad construction requires the banking of the track towards the outside edge of the curve.

As both tracks should be banked at the point of connection and as the curves are opposed there, the tracks will be in opposing planes instead of approaching each other in the same plane.

c. The interchange facilities between the two roads would necessarily be in the angle between two diverging or opposing curves, which is objectionable from a construction and operating standpoint.

d. The connection thus made would require what is known as a facing point switch on a curve, which is highly objectionable.

II

The Proposed Point of Connection is at a Place Where the Alabama & Vicksburg Railway Company's Track is on a Fill of Approximately Ten Feet.

A connection at such a point is objectionable for the following reasons:

a. The fill being approximately ten feet in height would necessitate a fill of an equal height for all of the sidings and interchange tracks, [fol. 1108] thus requiring a heavy initial expense, and a continuing heavy expense for maintaining.

b. The existence of these various fills would seriously interfere with the drainage between the tracks and require the solution of difficult and expensive drainage problems.

c. Operation on a ten foot fill on a curve is always more dangerous than operation on the level ground. The proposed point of connection will increase this danger by increasing the movement over such a danger point.

III

The Proposed Connection is at a Public Road Crossing

The tentative point of intersection is immediately east of the highway and crossing known as Curran's Crossing. This crossing has heavy highway traffic as it carries all of the traffic leading to points east of Pearl River and points eastward along the Alabama & Vicksburg Railway tracks into and out of Jackson, Mississippi. This crossing is a dangerous crossing and has already been the scene of serious accidents. The placing of a junction point between two railroads immediately at such a crossing would materially increase the amount of train movement over this crossing, thereby increasing materially the likelihood of accident at that crossing.

IV

The proposed junction is near the suburbs of the city of Jackson and will create difficulties in the rearranging of the block-signal system of the Alabama & Vicksburg Railway Company into Jackson, thereby increasing the operating difficulties and probably causing delay in the movement of trains.

[fol. 1109] Attention is specially directed to this subject for the following reasons:

a. The Pearl River Valley is about five miles wide and is subject to periodic floods of a violent nature, as Pearl River goes out of its banks and inundates this valley, at least once a year. When it does so, its waters inundate the entire valley, and are thrown with considerable force against the railroad embankment. The proposed connection contemplates that the two railroad embankments will form a V in this valley, the effect of which would be to gather the Pearl River flood from a considerable area and hurl it out in concentrated force upon the embankment of the Alabama & Vicksburg Railway Company, at one or two special points thereby materially increasing the danger to the Alabama & Vicksburg Railway Company at annual or semi-annual washouts.

The proposed junction point contemplates that the road bed of the Jackson & Eastern Railroad Company will run for approximately a mile near a dangerous bank of Pearl River, and further provides that the intersection itself will be in close juxtaposition to a second dangerous bend in Pearl River thereby materially increasing the danger to the Alabama & Vicksburg Railway Company of interruption of its traffic by high water.

For these reasons, The Alabama & Vicksburg Railway Company now at a time prior to the purchase or other acquisition of right of way in this Pearl River bottom by the Jackson & Eastern Railroad [fol. 1110] Company, respectfully points out the foregoing many difficulties and objections to the proposed point of intersection; and respectfully requests that any further consideration of the point of intersection indicated be abandoned at this time, and that if any intersection is sought, that same be sought not closer to Pearl River than Pearson's Station, Mississippi.

Respectfully, The Alabama & Vicksburg Railway Co., by J. Blanc Monroe, General Counsel.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1111] EXHIBIT "J" TO THE TESTIMONY OF L. A. JONES

Interstate Commerce Commission

Office of the Secretary

Washington

November 2, 1921.

Mr. J. Blanc Monroe, General Counsel the Alabama & Vicksburg Railway Company, New Orleans, La.

DEAR SIR: The Commission is in receipt of your letter of October 26th setting forth the objections of the Alabama & Vicksburg Railway Company to the construction of a track connection between the Alabama & Vicksburg Railway Company and the proposed line of the Jackson & Eastern Railroad Company near Jackson, Mississippi.

This matter was recently brought to the attention of the Commission by letter from Mr. S. A. Neville, President of the Jackson & Eastern Railway, in which he requested information as to whether it would be necessary to secure an order from the Commission so that such a connection might be made. In reply he was advised that if your road was willing to have the connection installed no order from the Commission was necessary, and his attention was directed to the provisions of paragraph (9) of section 1 of the Interstate Commerce Act which sets forth the Commission's power to order such a connection.

In view of this disposition of the question no further action seems to be necessary in connection with your letter at this time.

[fol. 1112] This will also serve as a reply to your letter of October 26, addressed to Mr. Gray of our Bureau of Finance.

Yours very truly, (original signed) G. B. McGinty, Secretary.

Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1113] EXHIBIT NO. A TO THE TESTIMONY OF GEO. B. NEVILLE

Neville & Stone, Attorneys at Law

George B. Neville.

Hardy R. Stone.

Meridian, Miss., April 22, 1922.

Circuit Clerk, Brandon, Miss.

DEAR SIR: The Chancellor has dissolved the injunction in the case of the Alabama & Vicksburg Railway Company v. The Jackson & Eastern Railway Company, so we desire to give new notice of hearing of the condemnation proceedings in the matter of the Jackson & Eastern Railway Company v. the Alabama & Vicksburg Railway Company, to the Canal Commercial Trust and Savings Bank, Trus-

tee, and Felix E. Gunter, Trustee, on the application which we filed with you in February.

We are herewith enclosing summons to be issued by you, to be delivered to the Sheriff, to be served on the Agent of the Alabama & Vicksburg Railway Company at Brandon. A copy of this summons will have to be posted on the Alabama & Vicksburg Railway at the point sought to be condemned.

We are also herewith enclosing notice for publication, and two copies thereof.

A new jury will have to be drawn, but we suggest that you do not [fol. 1114] draw the jury until about May 10th. You will please have the notice for publication inserted in the next issue of your County paper, and have it published therein for three consecutive weeks.

The Sheriff will have to serve one copy of the summons on the Agent of the Alabama and Vicksburg Railway Company, at Brandon, and also post one copy thereof in a conspicuous place on the property sought to be condemned. If the Sheriff does not know where the place is located, tell him to let us know and we will send a representative there to go with him when he posts it.

Under Section 3921, of the Code, it is your duty to mail a copy of the published notice to the Canal Commercial Trust & Savings Bank, of New Orleans, La., Trustee, and also a copy thereof to Felix E. Gunter, Trustee, care the Canal Commercial Trust & Savings Bank, of New Orleans, La.

All of these papers will have to be issued on the application which we sent you in February. We have written on the original summons the returns to be made by the Sheriff.

If there is any further information you may desire in regard to this matter, please let us know.

Thanking you, we are

Yours very truly, (Signed) Neville & Stone. GBN/II.

P. S.—The Sheriff will also have to serve a copy of the summons on John Neely, the Justice of the Peace. N. & S.

#375. Jackson & Eastern Ry. Co. v. A. & V. Ry. Co. Filed April 24, 1922. D. P. Gayden, Clerk Circuit Court Rankin County, Mississippi.

[fol. 1115] I, D. P. Gayden, Clerk of the Circuit Court of Rankin County, Mississippi, hereby certify that the annexed 2 pages present a full, true and correct copy of a certain public document now on file in my office.

Witness my hand and official seal, this 4th day of December, 1923.

(Signed) D. P. Gayden, Circuit Clerk, Rankin County, Mississippi.

Endorsed: Received and filed April 19, 1924. W. J. Buck, by W. J. Brown, D. C.

[fol. 1116] EXHIBIT M TO TESTIMONY OF LARZ A. JONES

Jackson and Eastern Railway Company

S. A. Neville, President & General Manager; J. A. McCain, Vice President; C. Sullivan, Secretary & Treasurer; J. E. Davis, General Freight Agent

File No. GO-55

Meridian, Mississippi, March 13, 1922.

Mr. L. A. Jones, Pres. & Gen. Manager, A. & V. Ry. Co., New Orleans, La.

DEAR SIR: With reference to our place of entering Jackson with our operation and having in mind Paragraph 4, Section 3 of the Interstate Commerce Act, we respectfully ask your consent that we might be permitted to operate our trains over your rails from a point where we propose to connect with you near Curran's Crossing into the City of Jackson, making joint use of your terminals in said operation.

We will be glad to confer with you looking forward to this arrangement and agreeing on a rental charge for such operation, this arrangement to be effective just as soon as we have completed our construction and begun operation, or in other words, during this year.

Awaiting your reply, I am,

Very truly yours, (Signed) S. A. Neville, President & General Manager. SAN/CS.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk.

[fol. 1117] EXHIBIT BB TO THE TESTIMONY OF L. A. JONES IN REBUTTAL

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, DIVISION 4, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 29TH DAY OF NOVEMBER, A. D. 1920

Finance Docket No. 9

In the Matter of the Application of THE JACKSON & EASTERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity to Construct a Line of Railroad in Mississippi

Application No. 1, Ce-2

It appearing, That on June 10, 1920, the Jackson & Eastern Railway Company filed with the Commission its application for a certificate that the present or future convenience and necessity require or will require the construction by the applicant of a line of rail-

road from Sebastopol, in Scott County, through the counties of Scott, Leake, Rankin, and Hinds, to the city of Jackson, all in the State of Mississippi; that at the request of this Commission a hearing was held before the Mississippi Railroad Commission at Jackson, Mississippi, on the 3d day of August, 1920, and that said Mississippi Railroad Commission thereafter transmitted to this Commission a transcript of the record made at such hearing, together with its recommendations, and

It further appearing, That a further hearing in the matter is necessary in order to receive additional evidence not presented at the hearing above referred to:

[fol. 1118] It is ordered, That said matter be assigned for further hearing before the Mississippi Railroad Commission, at its office in Jackson, Mississippi, on the 13th day of December, 1920, at 9 o'clock A. M., at which time and place interested parties may appear and be heard in the premises.

It is further ordered, That Examiner A. R. Mackley be and he is hereby assigned to attend and represent this Commission at such further hearing:

It is further ordered, That notice of said hearing be given to the general public by posting a copy of this order in the office of the Commission's Secretary, at Washington, D. C., and that such notice be given to the Governor of the State of Mississippi, and to the Mississippi Railroad Commission, by sending to each of them by registered mail a copy of this order; and

It is further ordered, That a copy of this order be served upon Mr. George B. Neville, Attorney for applicant, Meridian, Mississippi, and upon Alabama & Vicksburg Railway Company, Illinois Central Railroad Company, Gulf & Ship Island Railroad Company, Yazoo & Mississippi Valley Railroad Company, Gulf, Mobile & Northern Railroad Company, New Orleans Great Northern Railroad Company.

By the Commission, Division 4.

George B. McGinty, Secretary. (Seal.)

Endorsed: Received and filed April 18, 1924. W. J. Buck, Clerk.
W. J. Brown, D. C.

[fol. 1119] EXHIBIT NO. T TO THE TESTIMONY OF LARZ A. JONES

Refer to File 867.

Alabama and Vicksburg Railway Company, Vicksburg, Shreveport
and Pacific Railway Company, Vicksburg Route

Larz A. Jones, President and General Manager

New Orleans, La., Sept. 30, 1921.

S. A. Neville, Esq., President & General Manager, Jackson & Eastern
Railway, Meridian, Mississippi.

DEAR SIR: With reference to your letter of the 17th and our
previous interview, I beg to say that The Alabama and Vicksburg

Railway Company is inclined to arrange a connection with the Jackson & Eastern Railway, providing a satisfactory location can be agreed upon.

The point which you tentatively suggested in our conversation in New Orleans presents so many difficulties that we cannot agree to that location. Some of the more pronounced of these difficulties are as follows:

1. The alignment of your track approach toward our right of way is such that it would deflect the waters of the Pearl River in flood season against and across our track and threaten the destruction of our embankment.

2. The point of connection would cause converging curve from the two lines which would meet directly east of a dangerous road crossing and at a point about equally distant from two trestles and only a small distance therefrom, and at such a location as to prevent a [fol. 1120] fair view from approaching trains in either direction of our trains stopping at that point.

I have personally made a careful examination of the proposed site and of the track immediately east thereof, and I very strongly urge that you reconsider your present line of approach and come to our line east of the Pearl River bottom, making the track connection at or near Pearson Station.

Yours truly, (Signed) Larz A. Jones, President & General Manager.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1121] EXHIBIT EE¹ TO THE TESTIMONY OF L. A. JONES

Mr. J. C. Stamm, Superintendent Alabama & Vicksburg Railway Company:

We, the undersigned locomotive engineers of the Alabama & Vicksburg Railway Company, believe that a junction of the Jackson & Eastern Railway Company with the Alabama & Vicksburg's Railway Company at Curran's Crossing will be very dangerous in the operation of A. & V. trains, both to the lives of the engineers and all other persons on the trains; and for our own safety, as well as the safety of the trains under our charge, we ask that this junction be made at a different place if possible.

(Signed) W. B. Hopson, J. E. Jones, F. Gilmore, F. C. Covert, W. W. Stone, J. Newron, G. A. Chapman, C. P. Guiney, D. Guiney, J. W. Jackson, W. E. Cunchiff, E. W. Widson, J. L. Ellington, R. L. Chiders, Chas. Horner, Engr.; J. E. Graham, J. T. Garrett, D. C. Giarra, R. C. Blake; Ed Graham, Chairman Engineers' Committee.

Endorsed: Received & filed April 19, 1924. W. J. Buck, Clerk.
W. J. Brown, D. C.

[fol. 1122] EXHIBIT NO. U TO THE TESTIMONY OF LARZ A. JONES

Jackson & Eastern Railway

Meridian, Mississippi

File No. GO-55.

October 6, 1921.

Mr. L. A. Jones, Pres. & Gen. Mgr. A. & V. Ry. Co., New Orleans, La.

DEAR SIR: I find your letter of the 30th ult. on my return from Washington; in discussing this matter with our engineers they advise me that they have left sufficient opening in the track to take care of just such a situation as you suggest and they advise me that the results that you fear will be impossible under their plan of construction.

I do not see where our connection with you at this point would increase in any way the dangers that you speak of. In fact if it should be necessary to stop trains at our junction point it seems to me that it would be better to have it at a point where dangers from operation would be minimized, which of course is the case where trains are brought to a stop or slowed in speed.

Please let me know if you will consider this matter further and if your decision is final; of course it will be necessary for me to submit the matter to the Interstate Commerce Commission as provided in the Transportation Act and if this would have to be done I would not want to lose any time in handling.

[fol. 1123] I have just returned from Washington where the Finance Board has approved my security issue and I want to start to work just as rapidly as I can get the organization in shape.

Yours very truly, (Signed) S. A. Neville, President & General Manager.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk,
by W. J. Brown, D. C.

[fol. 1124] EXHIBIT NO. N TO THE TESTIMONY OF L. A. JONES

Jackson & Eastern Railway

Meridian, Mississippi

S. A. Neville, President & General Manager

October 17, 1921.

Mr. L. A. Jones, Pres. & Gen. Mgr. A. & V. Ry. Co., New Orleans, La.

DEAR SIR: With further reference to my letter of the 6th instant, unless I hear from you by the 25th, I will assume that it will be im-

possible for us to reach an agreement between ourselves and I will therefore apply to the Interstate Commerce Commission for authority to connect.

Yours very truly, (Signed) S. A. Neville, President & General Manager.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1125] EXHIBIT M 2 TO THE TESTIMONY OF LARZ A. JONES

Jackson and Eastern Railway Company

Meridian, Mississippi

File No. GO-55.

October 26, 1921.

Mr. L. A. Jones, Pres. & Gen. Mgr. A. & V. Ry. Co., New Orleans, La.

DEAR SIR: I beg to acknowledge receipt of your letter of the 24th inst., file 867, as you know we ultimately expect to enter Jackson with our operation, you can therefore see that it would be impracticable for us to throw our line back east as suggested by you, and in view of your position there is nothing further for us to do except to submit the matter to the Interstate Commerce Commission for their consideration, and of course we both will have to be guided by their conclusion. I regret very much that we could not reach an agreement between us.

Will you please be so kind as to return the blue print that I left in your office as I am having need of this every day.

Thanking you in advance, I am,

Very truly yours, (Signed) S. A. Neville, President & General Manager.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1126] EXHIBIT EE² TO THE TESTIMONY OF L. A. JONES

We, the conductors, employed by the Alabama & Vicksburg Railroad Company, know that the proposed connection of the Jackson & Eastern Railroad with the Alabama & Vicksburg Railroad at Curran's Crossing just East of Jackson to be a very dangerous and hazardous place to make connection. Should a connection be made at this place, it would greatly endanger the lives of all men employed to train and engine service, and greatly increase their duties in doing their work getting into and out of Jackson account of having to have Register station at this junction point should it be made, which would necessitate the stopping of all trains for register purposes, causing delay to all trains. This is a very busy piece of track

and is occupied almost all of the time, and the fact that should this connection be made, our lives would further be endangered, also the lives of the people riding on the trains, as well as the employees, from the fact that we would have to work against incompetent railroad men, which roads of the Jackson & Eastern Railway kind usually employ in their beginning.

We feel that something should be done, if possible, to prevent this connection on this curve, where now proposed at this very dangerous place. Curran's Crossing is a very dangerous crossing and there is lots of traffic over it, also nearing the foot of Farish Bridge would greatly increase the dangers and delays to trains and trainmen, be-[fol. 1127] cause in switching over this crossing, there would have to be a flagman left at it to look out for crossing while trains were switching, and it would take some member of the crew who should be used in other duties. We feel, as employees that we should protest against the Jackson & Eastern making this connection and endangering the lives of all the men and the travelling public in the manner that it will. We hereby request and instruct our General Chairman, L. E. Evans, to do anything that he can in representing us, if possible, to prevent this dangerous connection, which we consider no less than a death trap. We are sure that Evans thoroughly understands the conditions and dangers that would beset this place in every way should such a connection be made.

(Signed) J. E. McElroy, Conductor; J. J. McCain, I. M. Rush, L. E. Williams, W. C. Ellis, R. P. Hall, R. R. Sanfers, W. M. Moon, R. P. Horton, C. W. Evans, J. L. Boutwell, M. Ramsey, H. S. Thomas, M. I. Jones, J. N. Haaf, H. C. Park, D. L. Gibson.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk.
W. J. Brown, D. C.

[fol. 1128] EXHIBIT C TO TESTIMONY BY COMPLAINANT

Certificate

The attached three sheets contain a true and correct copy of House Bill No. 913, as the same was introduced in the House of Representatives of the Mississippi Legislature on March 23rd, 1922, the original of which is now in my official custody as Clerk of the House of Representatives.

The bill was referred to Division "B" of the Judiciary Committee of the said House and reported by them on March 30th, 1922, unfavorably.

Witness my signature, this August 13, 1923.

(Signed) Geo. B. Power, Clerk of the House of Representatives, Mississippi Legislature.

I, Joseph W. Power, Secretary of State of Mississippi, hereby certify that George B. Power is the present elected and acting Clerk of

the House of Representatives of the Mississippi Legislature and was such on March 23rd and March 30, 1922; that he is the only person authorized to certify as to legislative bills in the House files that have not become laws; that the above and foregoing is his signature and that he is an officer without any official seal.

[fol. 1129] Witness my signature and the Great Seal of the State of Mississippi, this the 13th day of August, 1923.

(Signed) Joseph W. Power, Secretary of State. (Seal.)

[fol. 1130]

House Bill No. 913

Messrs. Bailey, Curry of Hinds, Pate, Hiltzman, Ferguson, Gipson,
& Denton, March 23, 1922

Judiciary, "B"

An Act to authorize the State Railroad Commission to require the use of terminal facilities of intrastate railroads, including the main-line track, or tracks, for a reasonable distance outside of such terminals by another intrastate railroad, or railroads, and providing for the ascertainment of compensation for the use of such terminal facilities and main line track, or tracks, for a reasonable distance outside of such terminals.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That if the State Railroad Commission on application of any railroad organized under the laws of this State, whose line of railroad lies wholly within this State, finds it to be in the public interest, and to be practicable without substantially impairing the ability of any other railroad organized under the laws of this State, and whose line of railroad lies wholly within this State, owning or entitled to the enjoyment of terminal facilities, to handle its own business, it shall have the power to require the use of such terminal facilities, including the main line track, or tracks, for a reasonable distance outside of such terminal of any railroad organized under the laws of this State, and whose line of railroad lies wholly within this State, by another railroad organized under the laws of this [fol. 1031] State, and whose line of railroad lies wholly within this State, on such terms, and for such compensation, as the railroads affected may agree upon, or in the event of a failure to agree, as the said Railroad Commission may fix as just and reasonable for the use so required to be ascertained on the principal controlling compensation in condemnation proceedings.

Section 2. The application for the use of terminal facilities, including the main line track, or tracks, for a reasonable distance outside of such terminal referred to in Section 1 hereof, shall clearly and fully set forth the character and extent of the use desired of such terminal facilities and main line track or tracks, for a reasonable distance outside of such terminal.

Section 3. At least ten days notice shall be given by the State Railroad Commission of any hearing on any such application to the railroad or railroads, whose terminal facilities and main line track, or tracks, for a reasonable distance outside of such terminal, are sought to be used. On the hearing of such application before the State Railroad Commission, all persons or corporations interested may introduce evidence, and may be represented by counsel. The compensation fixed by the State Railroad Commission for the use of such terminal facilities and main line track, or tracks, shall be paid before the enjoyment of such use may be commenced by the applicant.

Section 4. If after the hearing the State Railroad Commission [fol. 1132] shall grant to the applicant the use of the terminal facilities and the main line track, or tracks, for a reasonable distance outside of such terminal, and the railroad whose terminal facilities and main line track, or tracks, for a reasonable distance outside of such terminal, is not satisfied with the terms fixed for such use, the railroad whose terminal facilities and main line track, or tracks, have thus been required to be given to another railroad shall be entitled to recover by suit or action against such other railroad proper damages for any injury sustained by it as the result of its compliance with such requirements, or just compensation for such use, or both, as the case may be.

Section 5. In the event the State Railroad Commission shall grant to the applicant the right to use the terminal facilities and main line track, or tracks, for a reasonable distance outside of such terminal, said commission shall have the authority to require the applicant to execute a bond, in a penalty to be fixed by said commission, and payable to the railroad, or railroads, whose terminals and main track, or tracks, are sought to be used by the applicant, and with sureties to be approved by the President of the Commission, conditioned to indemnify and save harmless the railroad, or railroads, whose terminals and main line track, or tracks, are sought to be used, from any damages it may thereafter sustain by the negligence of such applicant, or any of its agents, or employees, in the use of such terminals, or main line track, or tracks, and indemnify and save harmless such railroad, or railroads, from any damages it, or they, may be compelled to pay to its or their employees, or to [fol. 1133] persons, as a result of any negligence of said applicant, or any of its agents or employees, in the use of such terminals, or main track, or tracks.

Section 6. Upon the entering of any order of said commission on its minutes requiring the use by such applicant of the terminal facilities and main line track, or tracks, of any other railroad, or railroads, as provided for in this act, and fixing the compensation for such use, if the applicant pay to the railroad, or railroads, whose compensation is so fixed, or tender to such railroad, or railroads, the amount so found, and pay the costs of such hearing, and fully comply with all other terms and conditions of such order, the applicant shall then have the right to use such terminal facilities and

main line track, or tracks, to the extent and in the manner provided for in such order. In case the railroad, or railroads, whose terminal facilities and main line track, or tracks, are sought to be used, the State Railroad Commission, the applicant may pay such compensation to the Secretary of said Commission, who shall be responsible on his bond therefor, and shall be compelled to receive

Section 7. Said Railroad Commission shall have authority on the hearing of any such application, in addition to requiring the applicant to pay a cash compensation, to require the applicant to pay to the railroad, or railroads, whose terminal facilities and main line track, or tracks, are sought to be used, a fixed sum, either annual, semi-annually, quarterly, or monthly, so long as said terminal facilities and main line track, or tracks, are used by the applicant, and said Commission shall also have the power from time to time, on the application of any railroad interested, either to increase or reduce such annual, semi-annual, quarterly, or monthly payments, and such increase or reduction shall not be made except on due hearing, after notice thereof is given to all interested parties. If the applicant shall fail to promptly pay such annual, semi-annual, quarterly, or monthly payments, it shall not have the right to use such terminal facilities, or main line track, or tracks, during the time it is in default in making said payments.

Section 8. All laws, or parts of laws, in conflict herewith shall be and the same are hereby repealed, in so far as they are in conflict with this act.

Section 9. That this act take effect and be in force from and after its passage.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk by W. J. Brown, D. C.

[fol. 1135] EXHIBIT C 1 TO THE TESTIMONY OF ———

By Complainant

Excerpt from House Journal, House of Representatives of Mississippi Legislature, Regular Session of A. D. 1922

* * * * *

House Journal, 67th Day

Thursday, March 30, 1922.

* * * * *

Report of Committee of Judiciary, Division "B"

Mr. Speaker: The Committee on Judiciary, Division "B" had under consideration the following bill referred to them, and have instructed us to report it back with the following recommendations:

H. B. No. 913. An act to authorize the State Railroad Commission to require the use of terminal facilities of intrastate railroads, including the main line track or tracks for a reasonable distance of such terminals by another intrastate railroad or railroads, and providing for the ascertainment of compensation for the use of such terminal facilities and main line track, or tracks, for a reasonable distance outside of such terminals. Title Sufficient. Do not Pass.

* * * * *

Walter Sillers, Chairman.

[fol. 1136] Secretary of State, Jackson, Miss.

STATE OF MISSISSIPPI:

Office of Secretary of State, Jackson

I, Jos. W. Power, Secretary of State of the State of Mississippi, do hereby certify that I am the proper and legally constituted custodian of the records of the Journals of the Legislature of the State of Mississippi, and I further certify that the within and attached excerpt from the House Journal of the said Legislature is a true and correct copy of the original of the said House Journal, as the same appears on file and of record in my office.

Witness my hand and the Seal at my office, this the 14th day of August, A. D. 1923.

(Signed) Jos. W. Power, Secretary of State. (Seal.)

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1137] EXHIBIT K 1 TO THE TESTIMONY OF ———

By Complainant

Mr. J. C. Stamm, Superintendent A. & V. Ry. Co., Vicksburg, Mississippi.

DEAR SIR: In compliance with your request of August 3, 1923, your file 961, herewith is furnished a statement of the five highest river gage readings, each year, at Jackson, Miss., as shown by the records on file at this office. There is no record of any readings during the year 1900, as gage readings by the government were not begun until June, 1901.

Trusting that these data will satisfy your requirements and awaiting your further commands,

Yours truly, (Signed) J. H. Jaqua, Meteorologist.

Data and original letter handed to Mr. A. S. Bozeman, Meridian. Copy of this letter to Mr. Stamm, Vicksburg.

[fol. 1138] EXHIBIT No. S TO THE TESTIMONY OF — — —

By Complainant

Mississippi Railroad Commission
Jackson, Mississippi

I, J. W. Williams, Secretary, do hereby certify that the attached are true and correct copies of any and all papers filed with the Mississippi Railroad Commission, in Cause No. 5356, styled Jackson and Eastern Railway Co. v. Alabama and Vicksburg Railway Co.

In re petition of Jackson & Eastern Railway Company to require the Alabama and Vicksburg Railway Company to permit the Jackson and Eastern Railway Company to connect its tracks with the Alabama and Vicksburg Railway Company, at a point in Rankin County east of the Pearl River bridge.

Filed June 19th, 1922. G. D. No. 3, page 494.

Also copy of records on page 494 of General Docket No. 3 and a copy order dismissing cause as shown on Minute Book 8, page 219, all of which are parts of the records of this office, of which I am the proper custodian.

Witness my hand and the seal of the Mississippi Railroad Commission this the 30th day of November anno Domini, 1923.

(Signed) J. W. Williams, Secretary of the Mississippi Railroad Commission. (Seal.)

[fol. 1139] Meridian, Mississippi, June 17, 1922.

Mississippi Railroad Commission, Jackson, Miss.

GENTLEMEN: Enclosed herewith we hand you a petition which we would thank you to give the earliest possible attention.

We undertook to condemn this connection but that proceeding has been tied up by injunction.

We also applied to the Interstate Commerce Commission and they advised us that the Transportation Act did not give them the authority to act. We are therefore taking the only other course that seems proper and adequate for us to take at this time.

Very truly yours, (Signed) S. A. Neville, President Jackson & Eastern Railway Co.

Endorsed: Filed June 19, 1923.

[fol. 1140] To the Honorable Members of the State Railroad Commission of Mississippi:

And now comes your petitioner, the Jackson and Eastern Railway Company, a railroad corporation organized under the laws of the State of Mississippi, and shows unto your Honors that under its Charter it is authorized to construct and operate a railroad from Union, Newton County, Mississippi, to Jackson, Hinds County, Mis-

Mississippi: that prior to 1917 it constructed said railroad from Union, Newton County, Mississippi, to Sebastopol, Scott County, Mississippi, and that it has continuously since the construction of said line of railroad operated trains between said points, and that it is now extending said line of railroad from Sebastopol to a point on the main line of the Alabama & Vicksburg Railway Company, 1,797 feet east from the first block signal semaphore east of the Alabama & Vicksburg Railway Company's bridge over Pearl River, said point being located in Rankin County, Mississippi: that petitioner's railroad and the railroad of the Alabama & Vicksburg Railway Company are of the same gauge, and that the extension of petitioner's railroad terminates, as aforesaid, within one mile of the main line of the Alabama & Vicksburg Railway Company, and that the line of railroad of petitioner and of the Alabama & Vicksburg Railway Company run parallel in such manner as to make it convenient that the track of petitioner and of the said Alabama & Vicksburg Railway Company be connected so that cars of freight may be transferred from one road to the other, at or about the point of the Alabama & Vicksburg Railway above described: and petitioner further shows that the convenience and welfare of the public will be subserved by connecting the tracks of petitioner and the [fol. 1141] Alabama & Vicksburg Railway Company at the point above described.

Petitioner further shows that the Alabama & Vicksburg Railway Company is a corporation, organized under the laws of the State of Mississippi, and owns and operates a line of railroad between Meridian, Lauderdale County, Mississippi, and Vicksburg, Warren County, Mississippi.

Petitioner further shows that it has requested the Alabama & Vicksburg Railway Company to permit this petitioner to connect its line of railroad, at the point above described, with the said Alabama & Vicksburg Railway Company, but that the said Alabama & Vicksburg Railway Company has refused to grant to this petitioner the right to so connect its line of railroad with the main line of the said Alabama & Vicksburg Railway Company at said point.

Petitioner prays that due notice be given the said Alabama & Vicksburg Railway Company of the filing of this petition and that on a hearing hereof your Honors will require this petitioner and the said Alabama & Vicksburg Railway Company to so connect their said tracks at the point above described, so that cars of freight may be transferred from one road to the other.

Respectfully submitted, (Signed) Jackson & Eastern Railway Company, by S. A. Neville, President. (Seal.)

Endorsed: Filed June 19, 1923.

[fol. 1142] MISSISSIPPI RAILROAD COMMISSION, JACKSON

No. 5356

JACKSON & EASTERN RAILWAY COMPANY

v.

ALABAMA & VICKSBURG RAILWAY CO.

In re Petition of JACKSON & EASTERN RAILWAY COMPANY to require the Alabama & Vicksburg Railway Company to permit the Jackson & Eastern Railway Company to connect their tracks with the Alabama & Vicksburg Railway tracks.

You are hereby cited to appear before the Railroad Commission of this State at their office in the State Capitol Building, at Jackson, Mississippi, Thursday, July 6, 1922, and show cause, if you can, why you should not be required to permit the Jackson & Eastern Railway Company to connect their tracks with the Alabama & Vicksburg Railway Company tracks at a point in Rankin County east of Pearl River Bridge.

Witness my hand and seal of the said Railroad Commission this the 26th day of June, 1922.

(Signed) J. W. Williams, Secretary.

[fol. 1143] Mississippi Railroad Commission, Jackson

July 25, 1922.

Mr. S. A. Neville, Pres. Jackson & Eastern Railway Company,
Meridian, Mississippi.

DEAR SIR:

Jackson & Eastern Railway Company v. Alabama & Vicksburg Railway Company

In re petition of Jackson & Eastern Railway Co. to require the Alabama & Vicksburg Railway Co. to permit the Jackson & Eastern Railway Co. to connect its tracks with the Alabama & Vicksburg Railway Company, at a point in Rankin County east of Pearl River Bridge.

In reference to the above styled cause, the Commission requests that this cause be reargued at the September meeting.

Yours very truly, Mississippi Railroad Commission, by J. W. Williams, Secretary. JWW/R.

[fol. 1144] Jackson & Eastern Railway Company

Meridian, Mississippi, September 25, 1922.

Mississippi Railroad Commission, Jackson, Miss.

GENTLEMEN: With reference to case before you, this Company v. A. & V. Ry. Co., we respectfully ask that same be continued until the November sitting for the reason that we have a case pending before the Supreme Court that is set for hearing in October and we prefer that no further action be taken until that case is disposed of.

Very truly yours, S. A. Neville, President Jackson & Eastern Railway Company.

[fol. 1145] Mississippi Railroad Commission, Jackson

September 29, 1922.

Mr. S. A. Neville, President Jackson & Eastern Railway Company,
Meridian, Mississippi.

DEAR SIR: We acknowledge receipt of your request of the 25th asking that your case before this Commission in reference to a physical connection with the Alabama & Vicksburg Railway Company be continued to the November meeting, for certain reasons. We are authorized by Mr. C. M. Morgan, Chairman of this Commission, to advise you that same is agreeable to the Commission.

Yours very truly, Mississippi Railroad Commission, by J. W. Williams, Secretary. JWW/JW.

Cc. Messrs. Bozeman & Cameron, Meridian, Miss.; Messrs. Thompson & Thompson, Jackson, Miss.

[fol. 1146] Jackson, Mississippi, March 29, 1923.

Mississippi Railroad Company, Mr. Williams, Secretary, Jackson, Mississippi.

Jackson & Eastern Railroad v. Alabama & Vicksburg Railway Co.

DEAR SIR: I am in receipt of a letter from Messrs. Bozeman & Cameron, Attorneys for the Alabama & Vicksburg Railway Company, Meridian, Mississippi, stating that they and Messrs. Neville & Stone, attorneys for the Jackson & Eastern Railway Company, had agreed that the above entitled case shall stand continued at the April Term of the Commission, and further stating that the Commission may enter a standing order continuing the case until after the Supreme Court shall decide the litigation between the two Companies pending in that court.

Yours truly, R. H. Thompson. RHT-W.

Received March 29, 1923.

[fol. 1147]

MISSISSIPPI RAILROAD COMMISSION

No. 5356

JACKSON & EASTERN RAILWAY COMPANY, Plaintiff,

v.

THE ALABAMA & VICKSBURG RAILWAY COMPANY, Defendant

And now comes the Alabama & Vicksburg Railway Company, defendants herein, and respectfully shows that the Mississippi Railroad Commission is without jurisdiction of this controversy, because:

(a) The United States Government is vested by the Constitution of the United States with exclusive jurisdiction of connections between railroads hereof, Congress has acted and has passed a statute, to-wit: the Interstate Commerce Act as amended February 28, 1920, and has hereby taken full possession of the field to the entire exclusion of all State Authorities, and any attempt by this Commission to take jurisdiction of this matter would be in contravention of the Constitution of the United States, particularly Section 8, Article 3, and of the Federal Statutes enacted by Congress thereunder, particularly the Interstate Commerce Act.

(b) The Mississippi Railroad Commission is a Body having only delegated powers, and among the powers delegated to it has not been the power to pass upon a controversy such as here presented.

Wherefore, Respondent prays that this proceeding be dismissed and for all, general, and equitable relief.

(Signed) S. L. McLaurin, A. S. Bozeman, J. Blanc Monroe,
R. H. Thompson, Attorneys.

Endorsed: Received & filed July 6, 1922.

[fol. 1148]

Interstate Commerce Commission
Washington, D. C.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of complaint filed December 10, 1921, and of answer of defendant filed January 17, 1922, in case No. 13,361, Jackson & Eastern Railway Company against Alabama & Vicksburg Railway Company, the originals of which are now on file and of record in the office of this Commission.

In witness where- I have hereunto set my hand and affixed the seal of said Commission this the 27th day of March, A. D. 1922.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

Received and filed July 6, 1922. Mississippi Railroad Commission, by J. W. Williams, Secretary.

[fol. 1149] JACKSON & EASTERN RAILWAY COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY

Application of the Jackson & Eastern Railway Company to the Interstate Commerce Commission

The application of the above named applicant respectfully shows:

1. That the applicant is a corporation organized under the laws of the State of Mississippi, with headquarters and post office at Meridian, Mississippi; is a common carrier, engaged in the transportation of passengers and property wholly by railroad, between points in the State of Mississippi, and is subject to the provisions of the Interstate Commerce Act.
2. That the defendant, the Alabama & Vicksburg Railway Company, is a common carrier, engaged in the transportation of passengers and property wholly by railroad, between points in the State of Mississippi, and is subject to the provisions of the Interstate Commerce Act.
3. That the applicant is authorized by Finance Docket Number 9 to extend its line of railroad from Sebastopol, Mississippi, to Jackson, Mississippi, and the with said docket there are filed maps and details describing and locating the said extension, and that the said applicant is now at work building and constructing the said extension, as provided for in said Finance Docket Number 9; that the record in said matter will show that it is the purpose of the applicant to connect with the Alabama and Vicksburg Railway at a point near to and east of the Pearl River Bridge of the said Alabama and Vicksburg Railway Company as shown on said map; this applicant states and shows that it is its desire to connect with the said Alabama and Vicksburg Railway and interchange freight at said junction, and that upon the completion of said construction by the applicant between Sebastopol, Mississippi, and Jackson, Mississippi, applicant desires to use the tracks of the said Alabama and Vicksburg Railway Company between the said point of connection east of the Pearl River Bridge, as shown by said map, and a point on the west side of said Pearl River, on Commerce Street, in the City of Jackson, Mississippi, at which point it is the purpose of this applicant to branch off from said main line of the said Alabama and Vicksburg Railway Company to the tracks of the New Orleans Great Northern Railroad Company, as now located on said Commerce Street.
4. Your applicant states and shows that it has applied to the said Alabama and Vicksburg Railway Company for physical connection at said point, and also for the use of its main line between the points above described, and that the said Alabama and Vicksburg Railway Company refuses to consent for this applicant to either connect with its said main line at said point, or to use its said track between said points.

[fol. 1151] 5. Applicant further states and shows that it will be to the public interest for said applicant to connect with the said line of said Alabama and Vicksburg Railway Company between the points above described; applicant further states and shows that the use of said track by applicant will not substantially impair the ability of the Alabama & Vicksburg Railway Company to handle its own business.

6. Applicant further states and shows that under said Finance Docket Number 9, it must complete its extension from Sebastopol, Mississippi, to Jackson, Mississippi, by January 1, 1923, and that in order to comply with the order of the Commission in reference to said extension it will be necessary for it to carry on its construction from both ends of said extension, and that it will be physically impossible for it to begin work at the Jackson, Mississippi, end until said physical connection with the Alabama and Vicksburg Railway has been made: at the present time the work on said extension is being carried on only from the Sebastopol end towards Jackson: applicant further states and shows that the facilities now owned by the said Alabama and Vicksburg Railway Company between the said point of connection, from said point on Commerce Street, in the City of Jackson, Mississippi, on the West side of Pearl River, are ample and adequate for its own business and also for the uses to which applicant desires to enjoy jointly with the said Alabama and Vicksburg Railway Company: applicant further shows that should it undertake to provide its own and separate entrance into Jackson, Mississippi, it would be a duplication of facilities, and contrary to [fol. 1152] the spirit of the Transportation Act, and would be a needless and useless expenditure in capitalization, and would be an added burden to shippers that it would serve, as well as to this applicant, which is now undertaking to serve the public in said territory.

7. This applicant further shows that this application is made in accordance with Section 1, Paragraph 9, and Section 3, Paragraphs 3 and 4 of the Interstate Commerce Act as amended February 28, 1920.

8. Applicant further states and shows that it is its purpose to use the terminals of the New Orleans Great Northern Railroad Company at Jackson, Mississippi, upon the completion of the said extension from Sebastopol, Mississippi, to said point of connection with the said Alabama and Vicksburg Railway Company, and that it is its purpose to use the tracks of the said New Orleans Great Northern Railroad Company from said point on Commerce Street in the City of Jackson, Mississippi, west of Pearl River, to the terminals of the said New Orleans Great Northern Railroad Company, at Jackson, Mississippi.

Wherefore this applicant prays for an order from the Interstate Commerce Commission, authorizing, directing and requiring a physical connection on the part of this applicant with the main line of

said Alabama and Vicksburg Railway Company, at a point above described, east of Pearl River, and also authorizing, directing and requiring the said Alabama and Vicksburg Railway Company to grant to this applicant the right to use that portion of the main line of the said Alabama and Vicksburg Railway Company between the two points above described, for the purpose of running its engines, trains and cars over said portion of said main line of said Alabama and Vicksburg Railway Company from said point of connection east of Pearl River to said point on Commerce Street west of Pearl River, in Jackson, Mississippi, and that the compensation and charges which this applicant should pay to the said Alabama and Vicksburg Railway Company for said physical connection, and for the above mentioned use of its main line, be fixed by the Interstate Commerce Commission, in order that the certificate of public convenience and necessity heretofore granted to applicant by the Interstate Commerce Commission may be utilized and made effective by this applicant.

Jackson and Eastern Railway Company, by S. A. Neville,
President. Neville & Stone, General Attorneys, Meridian,
Mississippi.

Originally received, date, November 25, 1921. Returned for correction, date, December 5, 1921.

Endorsed: December 10, '21. 754,977. Docket No. 13361. Filed December 10, 1921. Interstate Commerce Commission.

[fol. 1154] INTERSTATE COMMERCE COMMISSION

Docket No. 13361

JACKSON AND EASTERN RAILWAY COMPANY
versus

ALABAMA AND VICKSBURG RAILWAY COMPANY

On application of Jackson and Eastern Railway Company for connection with the Alabama and Vicksburg Railway Company and utilization of bridge and other facilities of the Alabama and Vicksburg Railway Company.

Now comes the Alabama and Vicksburg Railway Company, and for answer to the application herein filed by the Jackson and Eastern Railway Company on the 10th day of December, 1921, and served upon the Alabama and Vicksburg Railway Company on December 23, 1921, with respect shows:

1. The allegations of Article 1 of the Application are admitted.
2. The allegations of Article 2 of the Application are admitted.
3. The allegations of Article 3 of the application are denied, and the facts averred to be that under date of July 12, 1921, this Com-

mission handed down its opinion, in the proceeding entitled "Finance Docket No. 9, in the matter of the application of the Jackson and Eastern Railway Company for a Certificate of Public Convenience and Necessity," attached to which was the Certificate issued the same day, which Certificate read in part as follows:

[fol. 1155] "It is ordered, That said Jackson and Eastern Railway Company be, and it is hereby, authorized to construct said extension: Provided, however, that this certificate is issued upon the express condition that said Jackson and Eastern Railway Company shall not issue any bonds, or other evidence of indebtedness, for the construction of said extension or for the refunding of any obligations arising out of such construction, directly or indirectly, for a period of five years from the date upon which actual construction of said extension shall commence: and that such extension shall be completed and placed in operation on or before December 31, 1922."

That thereafter the said Jackson and Eastern Railway Company filed with this Commission on August 16, 1921, its application for a modification of the decision handed down on July 12, 1921, and herein above referred to, and that said application for said modification is still pending before this Honorable Body, the matter being now held in abeyance with a letter addressed to the Director of Finance of the Interstate Commerce Commission, dated November 4, 1921, by Mr. S. A. Neville, President of the Jackson and Eastern Railway Company:

That notwithstanding the facts above stated, there has been published in the public press at Jackson under date of December 8, 1921, a letter which respondent is informed and believes was written by [fol. 1156] President Neville of Jackson and Eastern Railway Company, and which reads, as published in the press, as follows:

"I have completed and now have in operation 14 miles of the Jackson & Eastern Railway, extending from Union, Mississippi, to Sebastopol, Mississippi. I have completed the survey of the line from Sebastopol to Jackson, Mississippi, and have acquired practically all of the right of way for the proposed extension and have also about completed the construction of five miles of the railroad west of Sebastopol. It is my purpose to complete the construction of the road from Sebastopol into Jackson by January 1, 1923, and in order to complete it by that time, it is deemed advisable to work from both ends.

"The railroad has been declared a public necessity by the Interstate Commerce Commission, and permission for its building given. There is a total bond issue of \$140,000.00 authorized against the railroad. Those bonds are secured by a first lien on the 14 miles of railroad now in operation, and will be first lien on all of said railroad when built from Sebastopol to Jackson.

"With the view of completing the road within the time mentioned, I desire to submit the following proposal, through you, to the citizens and business interests of Jackson, Mississippi:

"If the citizens and business interests of Jackson, Mississippi, will purchase \$93,000.00 of the above mentioned first mortgage bonds of the Jackson and Eastern Railway Company, authorized to be issued by the Interstate Commerce Commission, said Company agrees to [fol. 1157] begin the construction of the Jackson and Eastern Railway at or near Curran's Crossing of the Alabama and Vicksburg Railway in Rankin County, Mississippi, within 7 days from the date bonds are subscribed for, and to continue the construction thereof along the route now surveyed, with reasonable diligence in a north-eastwardly direction from Curran's Crossing, and complete and put in operation 11 miles of said railroad extending along the route as surveyed from the point of beginning on or before the 1st day of September, 1922. I also agree to construct from Sebastopol one mile west of railroad for each mile constructed out of Jackson.

"The Jackson and Eastern Railway Company further agrees that the proceeds of the bonds may be deposited with a Trustee and paid out on the pay roll of the railroad company, and for material used in the construction of said railroad from time to time on the Jackson end as the work progresses. The amount paid from time to time to be determined by the estimate of the engineer to be selected by your committee.

"If, for any reason, the work is not begun within seven days from the date said bonds are subscribed for, the Trustee may return to the purchasers of said bonds, the purchase money paid therefor and return the bonds to the railroad. Or, if for any reason, after construction is begun, the work is not pushed with reasonable diligence, the Trustee may return to the purchasers of said bonds the proceeds thereof to the extent then in its hands, but hold said bonds to secure the sums which it may have paid out on account of the construction of said railroad.

[fol. 1158] "It is further understood and agreed that the Trustee is to make no disbursements from the proceeds of said bonds until the Committee is satisfied that the Jackson and Eastern Railway Company has been granted a connection with the Alabama and Vicksburg Railway Company and a right of entry into Jackson by the Interstate Commerce Commission, or it has secured such permission from the Alabama and Vicksburg Railway Company and the New Orleans Great Northern Railroad Company.

"Of course, it is understood that the work beyond the eleven miles herein before mentioned, and between this and Sebastopol, is to be pushed with reasonable diligence, and the railroad completed and put in operation from Union to Jackson by January 1, 1923."

That, while it is a fact that Finance Docket No. 9 shows that it is the purpose of the Jackson and Eastern Railway Company to connect with the Alabama and Vicksburg Railway Company at a point near to and east of the Pearl River bridge of said The Alabama and Vicksburg Railway Company, as shown on said map, it is also a fact that, in view of the many objections and dangers attendant upon a connection, The Alabama and Vicksburg Railway Company voluntarily, and without being cited, filed with this Commission under date of October 26, 1921, its objections to such a connection,

the receipt of which objections were acknowledged by the Secretary of the Commission under date of November 2, 1921, and that said [fol. 1159] objections are on file in said Finance Docket at this time, and read as per copy of same attached hereto as Exhibit 1.

That at no time prior to the filing of the present application has the Jackson and Eastern Railway Company ever applied to The Alabama and Vicksburg Railway Company for the use of the tracks of said road between the designated points of connection east of Pearl River Bridge and a point on the west side of Pearl River on Commerce Street in the City of Jackson: to the contrary, applicant, through its President, has specifically disclaimed to The Alabama and Vicksburg Railway Company any such intention.

4. In answer to Article 4 respondent admits that the Jackson and Eastern Railway Company applied to it for a physical connection with its line at Curan's Crossing, and avers that a connection at Curan's Crossing should not be permitted by this Honorable Body for the reasons fully set out in its letter to the Interstate Commerce Commission of October 26, 1921, annexed hereto as Exhibit 1, and made part hereof as if herein set out in extenso.

Further answering Article 4, respondent denies absolutely that the applicant at any time prior to the filing of the present application made to it any application or gave to it any notice of its desire or intention to use the main line of The Alabama and Vicksburg Railway Company between the points described in the application, said question having been, for the first time, raised by the applicant [fol. 1160] in the present proceeding: the truth and fact being that upon inquiry by the Alabama and Vicksburg Railway Company the President of the Jackson and Eastern Railway Company stated that it was not the intention of the Jackson and Eastern Railway Company to use the Bridge or tracks of The Alabama and Vicksburg Railway Company, but to interchange its freight and passenger business originating at or destined to Jackson or beyond with The Alabama and Vicksburg Railway Company at the point of connection asked for.

5. The allegations of Article 5 of the application are denied and the facts averred to be that it will not be to the public interest for applicant to connect with respondent at the point designated, but will be detrimental, in a high degree, to the public interest. Respondent further shows that the use of the tracks mentioned in the application will substantially impair the ability of The Alabama and Vicksburg Railway Company to handle its own business.

6. Respondent denies the allegations of Article 6 as to the date of completion of the applicant's road and the necessity for construction work at both ends, for lack of information, and further answering such article, denies specifically that its facilities are ample and adequate for its own business and much less also to the uses for which applicant desires to place them jointly with it, and denies that a duplication of facilities, contrary to the spirit of the Transportation Act of 1920,—a needless and useless expenditure and an added burden to shippers or to the applicant,—would arise should

applicant not be permitted to utilize respondent's facilities, but compelled to provide its own facilities.

[fol. 1161] 7. The allegations of Article 7 are denied.

8. The allegations of Article 8 of the application are denied, and respondent avers that it is informed by the executive officers of the New Orleans Great Northern Railroad Company that no negotiations have been had with the Jackson and Eastern Railway Company by the New Orleans Great Northern Railroad Company looking to the use by the former company of any of the property or facilities of the New Orleans Great Northern Railroad Company in Jackson, Mississippi, and that it is not the purpose of the New Orleans Great Northern Railroad Company to permit such user.

Respondent further denies that the New Orleans Great Northern Railroad Company has any tracks in the City of Jackson, except a short detached sidetrack built many years ago which is not connected with any other track of their own, and which has never been used for transportation purposes, and states that the New Orleans Great Northern Railroad Company has no terminals at Jackson, Mississippi, but uses the terminals of the Illinois Central Railroad Company.

Wherefore respondent prays that the application of the Jackson and Eastern Railway Company may be dismissed at its cost and for such other and further orders as may be necessary in the premises, and for general relief.

The Alabama and Vicksburg Railway Company, by Larz A. Jones, President. J. Blanc Monroe, D. Lynch Younger, Attorneys.

[fol. 1162] MISSISSIPPI RAILROAD COMMISSION, JACKSON, MISS.

No. 5356

JACKSON & EASTERN RAILWAY COMPANY

v.

THE ALABAMA & VICKSBURG RAILWAY COMPANY

General Docket, Railroad Commission of the State of Mississippi

No. of cause	When filed		Nature or description of Min. papers filed	Min. book	Page	Remarks
	Mo.	Year				
5356	6/19	22	In re Petition of Jackson & Eastern Railway Company to require The Alabama & Vicksburg Railway Company to permit the J. & E. Ry. Co. to connect its tracks with the A. & V. Ry. Co., at a point in Rankin County east of the Pearl River Bridge. Further consideration of this cause set for—			
	July	24, 1922	September meeting.....	8	37	
	Sept.	6, 1922	Continued until October meeting.	8	75	
	Oct.	4, 1922	Continued until November meeting.	8	109	Request of Petitioner.
	Nov.	8, 1922	Continued until December meeting.	8	121	
	Dec.	5, 1922	Continued until Jany. 1923 meeting.	8	141	Joint request of Petitioner and Respondent.
	Jany.	2, 1923	This case continued.....	8	175	
	Feby.	6, 1923	This cause continued.....	8	183	Joint request of Petitioner and Respondent.
	Mar.	6, 1923	Ordered continued until April 1923 meeting.	8	199	do.
	April	3, 1923	Order dismissing.....	8	219	

[fol. 1163] This is a true and correct copy of Page 494, General Docket 3, Railroad Commission, State of Mississippi.

(Signed) J. W. Williams, Secretary of Mississippi Railroad Commission. (Seal.)

[fol. 1164] MISSISSIPPI RAILROAD COMMISSION, JACKSON, MISSISSIPPI

No. 5356

JACKSON & EASTERN RAILWAY COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY

In re petition of the Jackson & Eastern Railway Company to require the Alabama & Vicksburg Railway Company to permit the Jackson & Eastern Railway Company to connect its tracks with the Alabama & Vicksburg Railway Company at a point in Rankin County, east of the Pearl River bridge.

This is a petition filed in June, 1922, and which has been continued on the docket of this Commission at the request of counsel for both Petitioner and Respondent, awaiting the decision of the Supreme Court of Mississippi in a suit wherein the same parties are involved and same questions are at issue. The Supreme Court having rendered an opinion in this matter on Monday, April 2, 1922, the Commission is of the opinion that this cause should be remanded to the files, and it is so,

Ordered this the 3rd day of April, 1923.

(Signed) J. W. Williams, Secretary of the Mississippi Railroad Commission. (Seal.)

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1165]

EXHIBIT K TO THE TESTIMONY OF COMPLAINANT

U. S. Department of Agriculture, Weather Bureau

June 24, 1901, to July 31, 1923

Form No. 1078—Met'l. Station, Jackson, Miss.

Year	Jan'y.	Feby.	March	April	May	June	July	August	September	October	November	December
1901	7.6	5.9	3.4	3.7	15.9
1902	15.2	18.6	37.2	.....	.....	.....	.....	7.9	.....	.....	12.2
1903	16.6	33.7	26.0	.....	.....	5.3	.....	.....	.....	.....	.....
1904	No Data Available.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1905	29.2	21.3	17.9	18.6	.....	No data.	.....	.....	.....	8.2
1906	14.5	10.0	29.6	.....	15.9	.....	No data.	.....	.....	.....	8.5
1907	10.7	19.5	27.3	.....	23.3	8.8	Data.	.....	.....	.....	.....
1908	29.9	27.5	.....	28.6	13.3	21.6	.....	.....	.....	.....
1909	25.3	19.3	.....	35.3	.....	11.6	.....	.....	.....	.....
1910	12.7	12.6	.....	.....	6.8	13.1	.....	.....	.....	.....
1911	20.4	12.1	.....	.....	12.9	.....	.....	.....	.....	.....	17.5
1912	20.7	.....	27.1	31.7	.....	.....	.....	.....	.....	.....	17.0
1913	27.0	28.9	29.0	18.7	.....	19.7	.....	.....	.....	.....	.....
1914	13.3	24.6	31.1	.....	.....	.....	9.1	9.5	.....	.....
1915	17.0	26.7	18.7	19.8	.....	.....	.....	.....	.....	.....	9.8
1916	26.7	26.2	.....	.....	.....	14.0	.....	.....	.....	.....	.....
1917	11.2	26.2	.....	17.1	16.1	24.3	.....	.....	.....	.....	.....
1918	12.8	16.0	.....	26.5	6.4	.....	.....	.....	.....	.....	.....
1919	22.9	.....	.....	.....	.....	.....	.....	.....
1920	24.3	20.3	27.6	21.0	.....	.....	.....	.....	.....	24.0	16.1
1921	27.6	.....	26.5	29.0	25.0	.....	.....	.....	.....	.....	30.5
1922	26.6	25.1	24.4	32.9	.....	.....	.....	.....	.....	.....	26.6
1923	18.4	28.8	27.6	14.3	.....	.....	.....	.....	.....	6.7
1923	30.7	30.6	29.1	23.0	.....	.....	.....	.....	.....	16.2

River Gage readings taken at the Hinds County Steel Highway Bridge across the Pearl River, Near Jackson. Zero of gage above mean sea level, 234.86 ft. Height of flood stage 20.0 ft.

J. H. Jaqua, Meteorologist, Weather Bureau, Office, Meridian, Miss

Endorsed on back: "Received and filed April 19, 1924. W. L. DeLoach, Clerk of the Court."

[fol. 1166] EXHIBIT "H" TO THE TESTIMONY INTRODUCED BY COM-
PLAINANT

STATE OF MISSISSIPPI,
Rankin County:

JACKSON & EASTERN RAILWAY COMPANY

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY, CANAL COMMERCIAL
Trust & Savings Bank of New Orleans, Trustee; Felix E. Gunter,
Trustee, and Unknown Holders of the First Mortgage Bonds of
the Alabama and Vicksburg Railway Company Dated April 1,
1921.

Condemnation Proceedings

To the Circuit Clerk of Rankin County, Mississippi:

And now comes the Jackson & Eastern Railway Company, a rail-
road corporation duly and legally organized under the laws of the
State of Mississippi, and makes application for the exercise of eminent
domain, pursuant to Chapter 43 of the Annotated Code of 1906 of
Mississippi, and of Section 4096 of said Code, and shows the fol-
lowing, to-wit:

1. That your applicant, the Jackson and Eastern Railway Com-
pany, was duly organized under the laws of the State of Mississippi
as aforesaid, for the purpose of constructing, maintaining and oper-
ating a railroad for public use, and for the conveyance of persons and
property from Union, Newton County, Mississippi to Jackson, in the
County of Hinds, and State of Mississippi, and through the counties
of Newton, Scott, Leake, Rankin and Hinds, in the State of Missis-
sippi, and that said applicant's principal place of business is Meridian,
Lauderdale County, State of Mississippi.

[fol. 1167] That the applicant has been granted, by the Interstate
Commerce Commission, a certificate of public convenience and neces-
sity, and authority to construct said railroad, as per Docket No. 9
of said Interstate Commerce Commission.

2. That in order for this applicant to construct, maintain and
operate its said railroad it is necessary to connect its main line of
railroad, as now surveyed and definitely located, with the main line
of the Alabama & Vicksburg Railway Company, one of the de-
fendants herein, with a switch turn-out, at a point on the main line
of said Alabama & Vicksburg Railway Company, and in the man-
ner as hereinafter described.

3. That the following real property, rights, privileges and ease-
ments are sought to be condemned, for the purposes hereinafter
stated, to-wit: A strip of land of varying widths, extending from
Station 0-00 on the survey enumeration of the applicant, the Jack-
son and Eastern Railway Company, which 0-00 Station is located
on the center line of the Alabama & Vicksburg Railway Company's

track 1,797 feet east from the first block signal semaphore East of the Alabama & Vicksburg Railway Company's bridge over Pearl River in an easterly direction along the surveyed line of the Jackson & Eastern Railway Company an average distance of 325 feet, the widths of said strip to be condemned are: At Station 0-00 16 feet, being 8 feet on each side of the center line; at Station 0-50, 21 feet, being 8 feet on the right and 13 feet on the left side of the center line of the Jackson & Eastern Railway Company's survey; at Station 1-50 27 feet wide, being 9 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2-00 30 feet wide, being 11 feet on the right and 19 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2-50 35 feet wide, being 15 feet on the right and 20 feet on the left of the center [fol. 1168] line of the Jackson & Eastern Railway Company's survey; at Station 3-00 30 feet wide, being 20 feet on the right and 10 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3-25, 20 feet wide, being all on the right of the center line of the Jackson & Eastern Railway Company's survey; and at Station 3-75 coming to a point on the North right-of-way line of the Alabama & Vicksburg Railway Company's said survey, containing two hundred and thirty-two thousandths (.232) acres, and lies in the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, Section 14, Township 5, North Range 1 East, Rankin County, Mississippi, which said center line of the proposed track of the applicant, the Jackson & Eastern Railway Company is more fully shown by a diagram hereto attached, marked Exhibit "A," and made a part hereof.

The connection which the applicant herein seeks to acquire by condemnation proceedings, with the main line of the defendant, the Alabama & Vicksburg Railway Company is to be a No. 9 turn-out, and the use of 75# rail, of the same character and design which is now in use on the main line of the Alabama & Vicksburg Railway Company at the point of connection. The said connection is to be made as shown by said diagram, Exhibit "A" hereto, and is to be located so that the point of the left hand frog will be 1,867 feet East of the first block signal semaphore situated on the main line of the Alabama & Vicksburg Railway Company West of the Curran's Crossing and East of Pearl River; the said turn-out to operate so that cars may be interchanged between the said Alabama & Vicksburg Railway Company and this applicant, and the said turn-out to be protected by a lock, and the main line of the Alabama & Vicksburg Railway Company to be further protected by a derail switch, which is to be placed on the rail of the applicant at a point one hundred feet beyond the point of the frog of the connecting turn-out on the North rail of the applicant's track, and the said derail switch to be kept locked open when not in use for [fol. 1169] the interchange of cars. The alignment of the Jackson & Eastern Railway Company's line adjacent to the main line of the Alabama & Vicksburg Railway Company's as shown by the map or diagram Exhibit "A" hereto. The crown of the said embankment of the applicant to be not less than 16 feet wide on top, with side

slopes of $1\frac{1}{2}$ feet horizontal to one foot vertical. The grade of the finished Jackson & Eastern Railway Company's track will coincide with the grade on the main line of the Alabama & Vicksburg Railway Company through the turn-out and beyond the switch ties, and continue as a 0.0 grade to Station 3-00, and from thence the grade will be a minus 0.3 of 1% for a distance of 1,700 feet.

There will be 1,033.3 cubic yards of earth fill in the Alabama & Vicksburg Railway Company's fill, which will come within the theoretical section of the proposed fill of the applicant, and there will be 85.2 cubic yards of slag ballast now under the Alabama & Vicksburg Railway track which will come within the ballast section of the applicant's proposed connection. Ballast of stone, gravel or slag will be placed $1\frac{1}{2}$ feet deep below the top of the cross-ties of the Jackson & Eastern Railway's track throughout that portion where drainage of the Alabama & Vicksburg Railway Company's track shall be affected by earth ballast, namely, from Station 0-00 to Station 2-00, on the Jackson & Eastern Railway Company's survey enumeration.

The switch ties to be used in the turn-out will be of White or Post Oak, of first class grade, and 7" x 9" cross section. The installation to be made under competent supervision, and in a workmanlike manner, in accordance with the standard practice of the A. & V. Railway Company.

The applicant further shows that the lands, easements, rights and privileges above described are owned by the defendant, the Alabama & Vicksburg Railway Company, a corporation organized [fol. 1170] under the laws of the State of Mississippi, and owning and operating a line of railroad, as a common carrier, from Meridian, Mississippi, to Vicksburg, Mississippi, which line of railroad extends through Rankin County, Mississippi.

Applicant further shows that the defendant, the Canal Commercial Trust & Savings Bank, is a corporation organized under the laws of the State of Louisiana, and domiciled and doing business in New Orleans, Louisiana, and that its postoffice address is New Orleans, Louisiana; and that the defendant Felix E. Gunter, is a non-resident of the State of Mississippi, that he is a resident of the State of Louisiana, and that his postoffice address is New Orleans, La.; c/o Canal Commercial Trust & Savings Bank; that the said Canal Commercial Trust & Savings Bank and Felix E. Gunter are named as Trustees in that certain mortgage or deed of trust executed by the said defendant, the Alabama & Vicksburg Railway Company, on March 23, 1921, to secure the First Mortgage Bonds issued by the said Alabama & Vicksburg Railway Company on April 1, 1921, for \$1,000,000.00, which said deed of trust or mortgage conveys to said Trustees, to secure said bonds, the property, rights, privileges and easements herein sought to be condemned.

This applicant further states and shows that the said First Mortgage Bonds issued by the defendant, the Alabama & Vicksburg Railway Company, dated April 1, 1921, are now owned by various corporations, whose names and postoffice addresses are unknown to this applicant.

4. Your applicant would further show that the public use for which the strip of land, rights, privileges and easements hereinabove described, is for a right of way for a switch track and the connection of said switch with the main line of the defendant, the Alabama & Vicksburg Railway Company at the point above described; and you- [fol. 1171] applicant further shows that it is necessary for it to own, occupy and use said strip of land, rights, privileges and easements above described, in order properly to conduct its business as a common carrier, for which purpose it was organized.

5. That your applicant has been, and still is, unable to agree with the defendant herein as to the compensation to be paid to them, and that the defendant, the Alabama & Vicksburg Railway Company has refused and declined to permit this applicant to connect with its main line in the manner as herein described, and that your applicant has not been able to obtain from the defendants the right, privileges and easements herein sought to be condemned.

6. Your applicant further shows that it is its intention, in good faith, to make the connection with the main line of the said Alabama & Vicksburg Railway Company in the manner and at the point herein described.

Wherefore your applicant prays that such steps be taken for the condemnation of said lands, rights, privileges and easements, for the purposes aforesaid, as are required by Chapter 43, and Section 4096 of the Annotated Code of 1906 of Mississippi.

And as in duty bound your applicant will ever pray.

Jackson & Eastern Railway Company, Applicant. Neville & Stone, Attorneys.

[fol. 1172] STATE OF MISSISSIPPI,
Lauderdale County:

Personally appeared before me, the undersigned authority in and for said county and state, S. A. Neville, President of the Jackson & Eastern Railway Company, the applicant in the above application, who states on oath that the facts set forth in the above and foregoing application are true and correct, as therein stated.

S. A. Neville.

Sworn to and subscribed before me this the 21st day of February, 1922. Hennie Harris, Notary Public. (L. S.)

No. 375. Jackson & Eastern Railway Company vs. Alabama & Vicksburg Railway Co. et als. Application to Condemn lands, etc. Filed Feb'y 25th, 1922. D. P. Gayden, Clerk. Neville Stone, Attys.

[fol. 1173] STATE OF MISSISSIPPI,
Rankin County:

In response to the foregoing application, John Neely, Justice of the Peace of Beat Two of Rankin County, Mississippi, is hereby ap-

pointed to constitute with a jury a special court of eminent domain, said court to convene at 10:00 o'clock A. M. on Friday, the 24th day of March, 1922, at Curran's Crossing, on the Alabama & Vicksburg Railway Company's main line East of its bridge across Pearl River in said County.

Given under my hand and official seal, this the 25th day of February, 1922.

D. P. Gayden, Clerk of the Circuit Court of Rankin County,
Mississippi.

[fol. 1174] STATE OF MISSISSIPPI,
Rankin County:

To the Sheriff of said County, Greeting:

This is to command you to summon the Alabama & Vicksburg Railway Company, a corporation, the Canal Commercial Trust & Savings Bank of New Orleans, La., Trustee, Felix E. Gunter, Trustee, and the unknown holders of the First Mortgage Bonds of the Alabama & Vicksburg Railway Company, dated April 1, 1921, defendants, if to be found in your county, and John Neely, Justice of the Peace of said County, to be and appear at 10:00 o'clock A. M., on Friday, the 24th day of March, 1922, at Curran's Crossing, on the Alabama & Vicksburg Railway Company's main line East of its bridge across Pearl River, in said county, the defendants to protect their rights as against the Jackson & Eastern Railway Company, applicant, who prays the condemnation of certain property, rights, easements and privileges described in its application now on file in my office, in which said defendants are alleged to be interested, and said Justice of the Peace to preside over a special court of eminent domain then and there to be organized for this purpose, and to have then and there this writ, to be filed with said Justice of the Peace, with your endorsement thereon.

Witness my hand and seal of the Circuit Court of said County, this the 25th day of February, 1922.

D. P. Gayden, Clerk of the Circuit Court of Rankin County,
Mississippi.

[fol. 1175] #375. Jackson & Eastern Ry. Co. vs. A. & V. Ry. Co. et als. Summons. Rec'd in my office this the 27th day of Feby., 1922. G. A. Harrison, Sheriff. Filed March 6th, 1922. D. P. Gayden, Circuit Clerk.

Sheriff's Return

STATE OF MISSISSIPPI,
Rankin County:

I have executed the within process personally on the defendant, the Alabama & Vicksburg Railway Company by delivering a true copy hereof to J. D. McWhorter, the agent of the said Alabama &

Vicksburg Railway Company, at Brandon, Rankin County, Mississippi; I have further executed the within process by delivering to John Neely, Justice of the Peace, a true copy of said writ.

The defendants, the Canal Commercial Trust & Savings Bank of New Orleans, La., Trustee, and Felix E. Gunter, Trustee and the unknown holders of the First Mortgage bonds of the Alabama & Vicksburg Railway Company, dated April 1, 1921, not to be found in my county.

This the 4th day of March, 1922.

G. A. Harrison, Sheriff.

I have further executed this writ by posting a true copy of the same conspicuously on the premises sought to be condemned.

This the 4th day of March, 1922.

G. A. Harrison, Sheriff.

[fol. 1176] STATE OF MISSISSIPPI,
Rankin County:

To the Sheriff of said County, Greeting:

This is to command you to summon the Alabama & Vicksburg Railway Company, a corporation, the Canal Commercial Trust & Savings Bank of New Orleans, La., trustee, Felix E. Gunter, trustee, and the unknown holders of the First Mortgage Bonds of the Alabama & Vicksburg Railway Company, dated April 1, 1921, defendants, if to be found in your county, and John Neely, Justice of the Peace of said County, to be and appear at 10:00 o'clock A. M. on Friday, the 19th day of May, 1922, at Curran's Crossing, on the Alabama & Vicksburg Railway Company's main line east of its bridge across Pearl River, in said county, the defendants to protect their rights as against the Jackson & Eastern Railway Company, applicant, who prays the condemnation of certain property, rights, easements and privileges described in its application now on file in my office, in which said defendants are alleged to be interested, and said Justice of the Peace to preside over a special court of eminent domain then and there to be organized for this purpose, and to have then and there this writ, to be filed with said Justice of the Peace, with your endorsement thereon.

Witness my hand and seal, of the Circuit Court of said County, this the 24th day of April, 1922.

D. P. Gayden, Clerk of the Circuit Court of Rankin County,
Mississippi.

[fol. 1177] No. 375. J. & E. Ry. Co. vs. A. & V. Ry. Co. et als.
Original summons.

Sheriff's Return

I have this day executed the within writ personally, by delivering to J. D. McWhorter, agent of the Alabama & Vicksburg Railway

Co., and to John Neely, Justice of the Peace, each a true copy hereof. The Canal Commercial Trust & Savings Banks and Felix E. Gunter, not to be found in my County.

G. A. Harrison Sheriff.

This 25th day of April, 1922.

Sheriff's Return

I have this day further executed this writ personally by posting a true copy thereof at a conspicuous place on the property sought to be condemned.

This the 25th day of April, 1922.

G. A. Harrison, Sheriff.

Filed April 26th, 1922. D. P. Gayden, Cir. Clerk.

[fol. 1178] George B. Neville.

Hardy R. Stone.

Neville & Stone, Attorneys-at-Law

Offices: Princess Building; P. O. Box: No. 833

Meridian, Mississippi, May 8, '22.

Circuit Clerk, Rankin County, Brandon, Miss.

DEAR SIR: With reference to the application filed by the Jackson & Eastern Ry. Co. vs. the A. & V. Ry. Co., et al., on April 22, 1922, wherein the Jackson & Eastern Ry. Co. sought to condemn switch connections at or near Curran's Crossing in your County, we beg to say that the Jackson & Eastern Ry. Co. desires to withdraw this application. You will, therefore, please notify Mr. Jno. Neeley, the Justice of the Peace, that there will be no hearing in this matter on the 19th inst. You need not draw any jury.

We will also thank you to notify Mr. S. L. McLaurin, attorney for the A. & V. Ry. Co., that the application has been withdrawn.

Please let us have a statement of the costs in this matter.

Thanking you, we are,

Yours very truly, Neville & Stone. GBN/H.

Filed May 9th, 1922. D. P. Gayden, Circuit Clerk.

[fol. 1179] CIRCUIT COURT OF RANKIN COUNTY, MISS.

Issue Docket

No. of case: 375.

Attys.' names: Neville & Stone; S. L. McLaurin.

Parties' names: Jackson & Eastern Railway Company vs. Alabama & Vicksburg Railway Company et als.

Cause of action: Application to condemn land.

Order of last term: —.

Order of present term: Off the docket. Withdrawn and cost paid 5/25/22. By order of Neville & Stone. D. P. Gayden, Circuit Clerk.

[fol. 1180] STATE OF MISSISSIPPI,
Rankin County:

I, D. P. Gayden, Clerk of the Circuit Court of Rankin County, State of Mississippi, do hereby certify that the annexed pages present a full, true, and correct transcript of the proceedings in Cause #375, styled Jackson & Eastern Railway Company versus Alabama & Vicksburg Railway Company, et al., as the same now appears of record in my said office.

In testimony whereof, I hereunto affix my signature, and seal of office this 6th day of August, 1923.

D. P. Gayden, Circuit Clerk. (Seal.)

Endorsed on back: Filed April 19th, 1924. W. J. Buck, Clerk, by W. J. Brown, D. C.

[fol. 1181] EXHIBIT NO. W TO THE TESTIMONY OF P. L. STACKER

Eutawville, S. C., Dec. 15, 1922.

Mr. H. J. Rhodes, Ch. Engr., A. & V. Railway Co., Vicksburg, Miss.

DEAR SIR: I received your letter and phoned a telegram to you today.

I hope you will not employ an instrument man before you have interviewed me personally.

I am not a graduate of a technical school but I can do transit and level work and keep notes so that another can plat or can plat notes myself.

I have studied many technical subjects myself since I began work and I have managed to post myself on a number of subjects while actually doing the work.

Should you be able to arrange transportation via Southern Railway, Pagnals, S. C., to Birmingham, Alabama, A. G. S., Birmingham, Ala., to Meridian, Miss. and thence on your own line to Vicksburg, I can come over any time; however, I prefer after Xmas as I expect to attend a family gathering on Xmas Day. If you wish to have an interview sooner I will come on arrival of passes.

Thanking you in advance for your favorable consideration, I am,

Yours very truly, (Signed) P. L. Stacker, Eutawville, S. C.

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk.

[fol. 1182] DISTRICT OF COLUMBIA,
City of Washington:

I, the undersigned Commissioned to take the deposition of E. M. Durham, Jr., witness for Complainants, residing in Washington, D. C., do hereby certify that the said witness was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that I carefully and impartially examined the witness on the interrogatories

attached to the Commission and that I personally fairly wrote down the testimony, and caused the same to be subscribed by the witness in my presence; and the testimony so taken down, with the commission and interrogatories and every exhibit relating thereto, are this day sealed up and directed to the Clerk of the Chancery Court of Lauderdale County, Mississippi, at Meridian, Mississippi, and deposited in the United States mail.

I further certify that I have no interest in said suit and that I am authorized to administer oaths by the laws of the District of Columbia, where the deposition is taken, being a Notary Public, duly appointed and commissioned in said District of Columbia. My commission expires on the 23rd day of March, 1925.

Given under my hand and official seal, this the 9th day of January, 1924.

(Signed) W. B. Robinson, Notary Public and Commissioner.
(Seal.)

[fol. 1183] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

E. M. DURHAM, JR., being first duly sworn, makes answer to the following interrogatories, as follows:

Interrogatories to be Propounded to E. M. Durham, Jr., Hurley Wright Building, Washington, D. C., a Witness on Behalf of the Complainant

Int. No. 1. What is your name, residence and occupation?

Answer No. 1. E. M. Durham, Jr., Washington, D. C., Director Division of Liquidation Claims, United States Railroad Administration.

Int. No. 2. Please state generally, how you have been employed in the last twenty years?

Answer No. 2. During the past twenty years, I have been employed in the Maintenance of Way and Construction Departments of the Southern Railway, in the valuation of the Atlanta, Birmingham & Atlanta Railway, in the Executive Department of the Southern Railway, and by the United States Railroad Administration, I have, in that period, successively held the positions of Assistant Engineer, Resident Engineer, Principal Assistant Engineer, Ex-[fol. 1184] ecutive General Agent, Assistant Chief Engineer, and finally Chief Engineer with the Southern Railway; Valuation Engineer with the Atlanta, Birmingham & Atlanta; Manager, Department of Way & Structures (another name for Chief Engineer), and finally Director, Division of Liquidation Claims with the United States Railroad Administration.

Int. No. 3. If you stated that you have been employed as an engineer, please state what technical training for that profession, you have had?

Answer No. 3. Am a graduate in Civil Engineering, Lehigh University, Class of 1896; was first employed in making a hydrographic survey of the Ouachita River, Louisiana, under Major Willard, U. S. Corps of Engineers, assisted in the survey of the Mohawk Valley, New York, for developing the cost of a ship canal, connecting the Great Lakes with the Hudson River, which was conducted by the National Government; Engineer in the Maintenance and Construction Departments of the Chicago & Northwestern Railroad. During my twenty years' service with the Southern Railway I had charge of preliminary and location surveys and construction work in all kinds of country peculiar to the South, from the swamps of the Yazoo Delta to the mountains of the Carolinas.

Int. No. 4. Please state whether you are familiar with the line of the Alabama & Vicksburg Railway Company between Jackson, Mississippi, and Pearson's Station, Mississippi, and with the country to the north thereof?

Answer No. 4. I am.

[fol. 1185] Int. No. 5. Are you familiar with the proposed junction between the Jackson & Eastern Railroad Company and the Alabama & Vicksburg Railway Company, near Curran's Crossing and East of Pearl River, Mississippi?

Answer No. 5. I am.

Int. No. 6. If you state that you are familiar with the said proposed junction, please give (a) The physical conditions of the track of the Alabama & Vicksburg Railway Company at that point and of the proposed track of the Jackson & Eastern Railroad Company at that point; and (b) State your opinion as an engineer of the proposed point of junction, giving your reasons fully?

Answer No. 6. (a) The proposed track of the Jackson & Eastern Railroad connects with the main line of the Alabama & Vicksburg Railway on the outside of a 1 degree 50' curve, about 750' east of the west end thereof and extends northerly on a curve in the reverse direction; the proposed junction is about midway between two 400' trestles on the Alabama & Vicksburg Railway main line, which are about $\frac{1}{4}$ mile apart; it is immediately east of an important highway crossing; the Alabama & Vicksburg Railway embankment at that point is about 10' high.

(b) In my opinion, it would be difficult to find a worse location for this junction, between Pearson and the Pearl River; it means a facing point switch on the outside of a curve, where fairly high speeds are normally maintained and the necessary reduction of the elevation of the outer rail, thus increasing the hazard of derailment; [fol. 1186] turnouts on the outside of a curve should never be permitted except in cases of extreme necessity; when Alabama & Vicksburg trains are stopped at this proposed junction, either to pick up cars or to allow Jackson & Eastern trains to clear, the hazard to trainmen, compelled by their duties to alight, is increased by reason of the height of the fill at this point and the trestles (mentioned above) on either side of the junction; this is especially true at night. Because of the curvature, the distance at which enginemen can see

whether this turnout is clear, is greatly reduced; if sidings for the interchange or switching of cars are constructed, which would be necessary, this difficulty would be magnified. The location of an important highway crossing, practically at the switch of the junction, will interfere with switching, thereby blocking the main line for a greater length of time, and most important of all, greatly add to the danger and inconvenience of that portion of the public who use the highway.

Int. No. 7. Have you made any studies to determine whether a junction between the proposed line of the Jackson & Eastern Railroad and the Alabama & Vicksburg Railway Company may be made elsewhere between Jackson and Pearson's Station, Mississippi?

Answer No. 7. I have.

Int. No. 8. Please state the relative merits of the proposed Junction point between the Jackson & Eastern Railroad and the Alabama & Vicksburg Railway near Curran's Crossing, Mississippi, suggested by the Jackson & Eastern Railroad Company, and of any other Junction point between Jackson, Mississippi, and Pearson Station, Mississippi, which you may have in mind?

Answer No. 8. East of the Pearl River and North of the Alabama & Vicksburg Railway the hills parallel the River at a distance varying from two to three miles as far North as Drake's Church. (See Government topographical map.) Between the hills and the River within this area, the ground is low and much of it is swamp, most of it is subject to overflow during the periodic floods of the Pearl River. The present Jackson & Eastern Railroad location leaves the foothills near Drake's Church and follows, substantially, the highway from that point to the proposed junction at Curran's Crossing. As the ground along this route is low, and subject to overflow, the present line, if adopted, should be provided with a large amount of trestle work in order that the flood waters from the River may be carried off in part through the swamp which lies between the foothills and the main channel, as is the case at present; if frequent trestles are not provided, the danger of washouts, which are highly probable in any event, is greatly enhanced. If this danger could be altogether obviated by following the foothills more closely, at a reasonable construction cost, it would seem the part of wisdom to do so. With this in view I made a reconnaissance of this territory and had a survey made of an alternate route between Drake's Church and the Alabama & Vicksburg Railway, joining the latter at a point about $2\frac{1}{2}$ miles East of the proposed connection at Curran's Crossing. The result is shown on drawing attached (marked exhibit "A"). It will be noted that:

- [fol. 1188] (1) A straight line may be secured on this route;
 (2) It is of substantially the same length as the Jackson and Eastern Railway survey;
 (3) The grading is about as light as could be desired for proper drainage;
 (4) A nearly level grade can be secured;
 (5) It is altogether clear of the Pearl River overflow;

(6) The only trestle work necessary is that required to care for drainage from the foothills;

(7) It does away altogether with the objections cited to the connection at Curran's Crossing.

I have not seen a profile of the Jackson & Eastern Railroad location but have been over the ground; I have no hesitation in stating however that if same consideration as the drainage is given in planning the work on the two routes, the alternate route suggested above will be cheaper, both to construct and to maintain. Construction will be cheaper because less trestle work is required and because the cuts will provide a portion of the material to make the fills, the Jackson and Eastern Railroad location would be practically all fill, if proper practices are followed. Maintenance will be cheaper because of better soil conditions, better drainage, and less trestle work.

[fol. 1189] Int. No. 9. Please state any other relevant facts bearing on the junction point near Curran's Crossing proposed by the Jackson & Eastern Railway Company, and any other junction point which you may have in mind which may be within your knowledge?

Answer No. 9. There is one important feature that has not been brought out in the foregoing discussions; that is the location of the Jackson & Eastern Railroad as originally projected and as now suggested. By reference to the topographical map. Jackson Quadrangle, hereto attached (marked exhibit "B"), there is shown thereon the approximate Jackson & Eastern Railroad location in full red line between its crossing of Hog Creek near Liberty Church and Curran's Crossing near the proposed Alabama & Vicksburg Railway connection, and in broken red line the alternate location. As has been pointed out the original location follows very closely the highway between Drake's Church and Curran's Crossing, immediately west of Curran's Crossing the highway crosses a swamp east of Pearl River, in part on a concrete bridge. This bridge is opposite, and very close to, some trestle work on the Alabama & Vicksburg Railway main line, all of this ground is low and subject to overflow, even when there is not extreme flood in the Pearl River. There is shown on the map an extensive swamp not immediately joining the River but about midway between the River and the line of hills to the East thereof, from Drake's church on the North to Conway Slough on the South. This swamp is connected with the River by various sloughs and bridges, such as Hog Creek, Prair Branch, Neely Creek, and Conway Slough. Whenever Pearl River is in [fol. 1190] flood the flood waters are relieved to some extent by the overflow to this swamp through Hog Creek, Prair Branch, and so on. This surplus water runs southwardly and finally returns to the River through Conway Slough, which crosses the Alabama & Vicksburg Railway main line. In times of extreme high water this circumstance affords considerable relief to the River proper at the Alabama & Vicksburg Railway crossing. It may readily be seen that the construction of a line as suggested by the Jackson & Eastern Railroad will tend to retard the flow of water from Pearl

River to this swamp and to concentrate it at a point between Curran's Crossing and the west bank of the Pearl River. In other words, it will tend to throw the flood waters back into the channel proper and the immediately contiguous swamps. The natural result of this would be to raise the water level in time of flood, at the Alabama & Vicksburg Railway crossing of the Pearl River. The highway at that point already goes under water and it is entirely possible that the concrete highway bridge may be washed out if any additional strain is brought on it, in which event the railroad trestle would go too. This constitutes a serious menace to traffic. It is wholly unnecessary because, as may be noted by reference to the map, the alternate line suggested will not interfere in any way with the flood between Pearl River and the swamp above mentioned, so that this relief outlet will be left as it is today. It may be claimed that the construction of sufficient trestle work on the Jackson & Eastern Railroad location will obviate this difficulty. It will reduce it, unquestionably, but it will not entirely eliminate it, because from the best of information I have been able to obtain, the flood waters [fol. 1191] of the Pearl River at extreme stages overflow practically the entire territory between Drake's Church and a point about $\frac{3}{4}$ of a mile east of Curran's Crossing (between points "A" and "B"). It has been shown that there is no real necessity for constructing the line on the location selected by the Jackson & Eastern Railroad Company under which circumstances it will appear that there is no reason for creating an extra hazard to the County Highway and to the Alabama & Vicksburg Railway between Curran's Crossing and the west bank of the Pearl River when the same object may be accomplished by the construction of the line entirely to the east of the swamp in question.

(Signed) E. M. Durham, Jr.

The above interrogatories were propounded by J. Blanc Monroe, Bozeman & Cameron, Solicitors for Complainants.

[fol. 1192] The State of Mississippi to W. B. Robinson, notary public, or to any judge of a court of record, justice of the peace, mayor, or chief magistrate of a city or town, commissioner appointed by the Governor of the State of Mississippi, or other person authorized to administer oaths by the law of the District of Columbia:

You are hereby authorized and requested to cause to come before you, at a time and place to be fixed by you, E. M. Durham, Jr., witness for the Complainant in a certain cause pending in the Chancery Court of Lauderdale County, in said State of Mississippi, styled Alabama & Vicksburg Railway Co. et al. v. Jackson & Eastern Railroad Company, No. 8052, and after having sworn or affirmed said witness to testify the truth, the whole truth, and nothing but the truth, you shall carefully and impartially examine the said witness on the interrogatories herewith sent. The taking of said evidence may be continued from day to day, or you may adjourn the taking

thereof from time to time, giving notice to the parties unless they are present when such adjournment is made.

The testimony of the witness so given, you shall cause to be fairly written down, either by yourself or by the witness, or some disinterested person in your presence, and then subscribed by the witness and the testimony so taken down, with this commission, and said interrogatories and every exhibit and voucher relating thereto, to be certified by you; and also a certificate by you of all your proceedings [fol. 1193] under this commission, shall be sealed up and directed "To the Clerk of the Chancery Court of the County of Lauderdale at Meridian, Mississippi," and transmitted in a safe and convenient manner, so as to reach the Clerk of said Chancery Court on or before the 15th day of January, A. D. 1924, to be read in evidence on the trial of said cause.

Given under my hand and official seal at Meridian, Mississippi and issued this the 29th day of December, A. D. 1923.

Geo. F. Hand, Chancery Clerk of Lauderdale County, Mississippi. (Seal.)

[fol. 1194] IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

STIPULATION RE TESTIMONY OF E. M. DURHAM, JR.—Filed April 19, 1924

Complainant have arranged to have its witness, E. M. Durham, Jr., attend the hearing of the above case and testify orally, but it now appearing that said witness will be unable to attend said hearing in person; and complainant desiring to take his deposition, requests defendant to waive the statutory notice and file its cross-interrogatories so that said deposition may be taken in time to be used at the hearing beginning December 5, 1923; and in default of such waiver,

This is to notify you that complainant has this day filed in the office of the Chancery Clerk of Lauderdale County, Mississippi, the attached interrogatories to E. M. Durham, Jr., witness for defendant residing in Washington, D. C. for the purpose of taking the deposition of said witness, and will 10 days from this date (unless an earlier date is agreed upon by defendant), have a commission issued to take the deposition of said witness on said interrogatories and such cross-interrogatories as may be filed by you within the time aforesaid.

This the 30th day of November, 1923.

J. Blanc Monroe, Bozeman & Cameron, Attorneys for Complainant.

Service of the foregoing notice with copy of said interrogatories acknowledged, this November 30, 1923.

Neville & Stone, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 1195] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

AGREEMENT TO SEND UP ORIGINAL EXHIBITS—Filed April 19, 1924

By reason of the difficulty in procuring accurate copies of the exhibits hereinafter listed, it is agreed by counsel for complainant and defendant, subject to the approval of the court, that all original exhibits offered in evidence and not copied in the transcript may be transmitted by the clerk to the Supreme Court as a part of the transcript without copying the same, said exhibits being as follows:

Exhibit "E" to testimony Jones—Blue Print Map.

" "G" 1 to G 6 and G-8—testimony Robertson—Photographs.

" "A" to testimony of Duffee—Topographical Map of Jackson Quadrangle; also marked Exhibit "O."

Exhibit "A" to cross examination of Duffee—Blue Print Map.

" "X" to testimony of Stryker—Drawing.

" "Y" to testimony of Hayden—Blue Print Map.

" B-Y-2" to testimony of Hayden—Blue Print Profile.

" "Y" to testimony of Hayden—Blue Print Profile.

" Y-3" to testimony of Ford—Map—White.

" "2-3" to testimony of S. A. Neville—Blue Print Map.

" "B" Blue Print of Switch.

" "R" Printed Mortgage "A. & V. Ry. Co."

Deposition and Exhibits of E. M. Durham, Jr.

Agreed to this the 4th day of April, 1924.

J. Blanc Monroe, R. H. & J. H. Thompson, S. L. McLaurin,
Bozeman & Cameron, Attorneys for Complainant. Neville
& Stone, Attorneys for Defendant.

This agreement filed April 7th, 1924. J. B. Holland, clerk."

[File endorsement omitted.]

[fol. 1196] IN CHANCERY COURT OF LAUDERDALE COUNTY

CLERK'S CERTIFICATE—Filed April 19, 1924

I, J. B. Holland, Clerk of Chancery Court, said County and State, do hereby certify that this is a true and correct copy of all the papers filed in case of Alabama & Vicksburg Railway Company vs. Jackson & Eastern Railway Company, as appears on file in this office, the case being styled 371/8052.

Given under my hand and official seal, this the 10th day of April, 1924.

J. B. Holland, Clerk.

[File endorsement omitted.]

[fol. 1197] IN CHANCERY COURT OF LAUDERDALE COUNTY

EXHIBIT IN EVIDENCE

First Mortgage

The Alabama and Vicksburg Railway Company to Canal Commercial Trust and Savings Bank and Felix E. Gunter, Trustees

An indenture, dated the first day of April, one thousand nine hundred and twenty-one, between the Alabama and Vicksburg Railway Company (hereinafter termed the "Railway Company"), a corporation organized and existing under the laws of the State of Mississippi, as hereinafter recited, party of the first part, and Canal-Commercial Trust and Savings Bank (hereinafter termed the "Corporate Trustee"), a corporation organized and existing under the laws of the State of Louisiana, and Felix E. Gunter (hereinafter termed "Individual Trustee"), of New Orleans, Louisiana, the corporate trustee and the individual trustee collectively being hereinafter termed the "Trustees," parties of the second part.

Whereas, The Railway Company is a corporation duly incorporated under and by virtue of Acts of the Legislature of the State of Mississippi approved February 23, 1846; March 9, 1850; March 8, 1852; March 16, 1852; October 18, 1852; February 4, 1854; March 11, 1856; December 26, 1856; November 27, 1858; March 31, 1864; December 4, 1865; January 28, 1867; July 19, 1870; March 5, 1875; March 9, 1882, and

Whereas, The Railway Company owns a line of railroad extending [fol. 1198] from the City of Vicksburg, in the State of Mississippi, to the City of Meridian, in the State of Mississippi, hereinafter more fully described; and,

Whereas, Heretofore the Railway Company and its predecessors in title have duly executed and delivered three several mortgages of its railroad aforesaid, under which mortgages, respectively, bonds are outstanding, that is to say:

(1) Vicksburg and Meridian Railroad Company First Mortgage dated April 1, 1881, to secure bonds of the aggregate principal amount of \$1,000,000, of which \$940,000, maturing April 1, 1921, are now outstanding;

(2) The Alabama and Vicksburg Railway Company Consolidated First Mortgage dated April 1, 1889, to secure bonds of the aggregate principal amount of \$1,800,000, of which \$580,800, maturing April 1, 1921, are now outstanding;

(3) The Alabama and Vicksburg Railway Company Second Mortgage dated April 1, 1889, to secure bonds of the aggregate principal amount of \$700,000, maturing April 1, 1921, of which \$416,100 are now outstanding; and

Whereas, The Railway Company, under an agreement dated May 1, 1905, hereinafter more fully described, has certain rights of use in the passenger station owned by the Meridian Terminal Company at the said City of Meridian, Mississippi, and is the owner of capital stock of said Meridian Terminal Company; and

Whereas, The Railway Company desires to provide for the retirement or refunding, at or before maturity, of the bonded indebtedness [fol. 1199] secured by all or any of the indentures of mortgage aforesaid, and also to provide moneys for the enlargement, improvement and betterment of its railroad and for other expenditures for its corporate purposes, and also to provide for the reimbursement of the Company for moneys heretofore expended from income for the purchase of additions and betterments and for the retirement of bonds, and intends to make provision to that end by the execution and delivery of this indenture of mortgage or deed of trust upon the railroads, properties and franchises of the Railway Company and by the issuance of bonds hereunder; and

Whereas, As the result of arrangements heretofore made, it is contemplated that forthwith upon the execution and delivery of this indenture, all of the bonds secured by the three mortgages above described, will be surrendered to the Railway Company and will be paid in full with funds obtained by means of certain of the bonds, secured by this indenture, and that thereupon such proceedings will be had that the said mortgages will be discharged and satisfied of record, all to the end that this indenture shall become a first lien upon the mortgaged premises hereinafter described.

Whereas, At a meeting of the Board of Directors of the Railway Company duly held, pursuant to due notice, at the office of the Railway Company in the City of Jackson, State of Mississippi, on the fourth day of March, 1921, a quorum being present, resolutions were duly adopted authorizing the execution and delivery by the Railway Company of a mortgage in the form of this indenture, to secure bonds for an aggregate principal amount not exceeding \$4,000,000 at any one time outstanding, issuable in the form authorized and for the purposes and upon the conditions set forth in this indenture; and [fol. 1200] Whereas, At a special meeting of the stockholders of the Railway Company, duly called and held, pursuant to due notice, at its said office in the City of Jackson, Mississippi, on the 4th day of March, 1921, the consent of stockholders owning more than ninety-four per cent of the entire outstanding capital stock of the Railway Company, was duly given, by vote, to the execution and delivery of this indenture of mortgage or deed of trust to the parties hereto of the second part and their respective successors, as Trustees, and to the issue hereunder from time to time of the bonds to be secured hereby as and within the limitation herein stated; and

Whereas, the First Mortgage submitted and approved at said meeting of the Board of Directors, and at said meeting of the stockholders, of the Railway Company, was of the form and tenor of this indenture; and

Whereas, The bonds are to be coupon bonds of the denomination of \$1,000 each and are to be dated April 1, 1921, and to be payable

April 1, 1951, and are to bear interest from April 1, 1921, at the rate of six per cent per annum, payable semi-annually on the first days of April and October of each year, and are to be redeemable at the option of the Railway Company on any interest-payment date prior to maturity at 105 per cent of the principal and accrued interest; and

Whereas, Subject to the provisions of this indenture, the text of the bonds and of the coupons to be attached is to be substantially as follows:

[fol. 1201]

(Form of Coupon Bond)

United States of America

No. —.

\$1,000.

The Alabama and Vicksburg Railway Company First Mortgage
Gold Bond, Six per Cent

The Alabama and Vicksburg Railway Company (hereinafter called the Railway Company), a corporation of the State of Mississippi, for value received, hereby promises to pay to bearer, on the first day of April, 1951, at the office or agency of the Railway Company, in the City of New Orleans, State of Louisiana, the sum of one thousand dollars in gold coin of the United States of or equal to the standard of weight and fineness existing at the date of this bond, and to pay interest thereon from the first day of April, 1921, at the rate of 6 per cent per annum, such interest to be payable at such office or agency, in like gold coin semi-annually on the first day of April and the first day of October in each year until the payment of said principal sum, but only upon presentation and surrender of the coupons therefor attached as severally they mature.

This bond is one of the First Mortgage Gold Bonds (coupon) of the Railway Company, for an aggregate principal sum not to exceed \$4,000,000 at any one time outstanding, issued and to be issued, under and pursuant to, and all equally secured by, an indenture of [fol. 1202] mortgage or deed of trust dated April 1, 1921, duly executed by the Railway Company to Canal-Commercial Trust and Savings Bank, a corporation of the State of Louisiana, and Felix E. Gunter, as Trustees, to which indenture and any and all supplements thereto reference is hereby made for a description of the railroads, properties and franchises mortgaged and conveyed or assigned to said Trustees, or their successors, the nature and extent of the security, and the rights of the holders of said bonds and of the Trustees in respect to such security.

In case of certain defaults specified in said indenture, the principal of all such bonds may be declared or may become due and payable in the manner and with the effect provided in said indenture.

As provided in said indenture, the bonds as an entirety are subject to redemption at the option of the Railway Company or any interest-payment date prior to maturity, upon publication, at least ninety days previously, of notice of such redemption in one newspaper in New Orleans, Louisiana, and one in the Borough of Man-

hattan, State of New York, at 105 per cent of the principal sum; accrued interest to the date of such redemption, also being payable upon presentation and surrender of the coupons therefor in accordance with the terms thereof. This bond shall pass by delivery.

No recourse shall be had for the payment of the principal or of the interest on this bond, or for any claim based hereon, or otherwise in respect hereof or of said indenture under which this bond is issued, against any incorporator, stockholder, officer or director, past, present or future, of the Railway Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise, all such liability being, by the acceptance of this bond and as part of the consideration of the issue hereof, expressly released, as provided in said indenture.

This bond shall not be entitled to any security or benefit under said indenture, and shall not become valid or obligatory for any purpose, until it shall have been authenticated by the execution by the Canal-Commercial Trust and Savings Bank, as Corporate Trustee under said indenture, or by its successor as such Corporate Trustee, of the certificate hereon endorsed.

In witness whereof, The Alabama and Vicksburg Railway Company has caused this bond to be signed by its President or a Vice President and its common seal to be affixed hereunto and to be attested to by its Secretary or an Assistant Secretary, and coupons for interest bearing the engraved facsimile signature of its Treasurer to be attached hereto. Dated the first day of April, 1921.

The Alabama and Vicksburg Railway Company, by ———
———, President.

Attest: ———, (Assistant) Secretary. (L. S.)

[fol. 1204] (Form of Interest Coupon)

No. —, \$30.00

On the first day of ———, ———, unless the bond below mentioned shall have been called for previous redemption, The Alabama and Vicksburg Railway Company will pay to bearer, at its office or agency in New Orleans, Louisiana, the sum of thirty dollars, gold coin of the United States, being six months' interest then due on its First Mortgage Gold Bond, No.

———, Treasurer.

(Form of Corporate Trustee's Certificate)

This bond is one of the issue of bonds described in the within-mentioned indenture.

Canal-Commercial Trust and Savings Bank, Corporate Trustee, by ———, Vice President.

And, whereas, All acts and things prescribed by law and by the by-laws of the Railway Company have been duly performed and

complied with, and the Railway Company has executed this indenture and purposes to issue the bonds hereby secured in the exercise of each and every legal right and power in it vested;

Now, therefore, this indenture witnesseth: That in order to secure the payment of the principal and interest of all bonds issued [fol. 1205] under this indenture according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and in order to charge with such payment and with such performance the mortgaged premises hereinafter described, and in consideration of the premises hereinafter described, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustees, the receipt whereof is hereby acknowledged,

The Railway Company, party of the first part hereto, has executed and delivered these presents, and has granted, bargained, sold, remised, released, conveyed, confirmed, pledged, assigned, transferred, and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, pledge, transfer, and set over, unto

The Trustee, parties of the second part, their successors and assigns forever:

All and singular the following property, hereinafter sometimes termed, collectively, "mortgaged premises," that is to say:

First. All the estate, right, title, interest, and property now belonging to the Railway Company, or that hereafter may be acquired by the Railway Company, of, in and to the following viz:

[fol. 1206] (a) All and singular the railroad of the Railway Company, extending from the City of Vicksburg, in the County of Warren and State of Mississippi, eastwardly through the Counties of Warren, Hinds, Rankin, Scott, Newton, and Lauderdale, in the State of Mississippi, for a distance of one hundred and forty-one miles, more or less, to the City of Meridian, in the County of Lauderdale, and State of Mississippi.

(b) Any and all rights of way, lands, fixtures, stations, shops, buildings, structures, improvements, appurtenances, tenements and hereditaments and other property, of whatever kind or description and wherever situated, now owned by the Railway Company or which at any time hereafter during the continuance of this indenture may be acquired by or for it, provided that such after-acquired property be acquired for some purpose incident to or connected with the maintenance, operation, construction or improvement of the aforesaid railroad, or any extension thereof, and appurtenances, excepting and reserving, however, all those certain lands in the Counties of Scott, Newton, Lauderdale, Kemper, Jasper, Simpson and Clarke, in the State of Mississippi, granted to The Southern Railroad Company afterwards styled The Vicksburg and Meridian Railroad Company) by the State of Mississippi, and not occupied by said railway, its right of way, superstructure, tracks, yards, grounds, stations,

depots, or other buildings, and excepting stocks and bonds not specifically described herein.

[fol. 1207] (c) Any and all steam or electric locomotives, engines, motors, cars and other rolling stock, equipment, vessels, boats, tugs, lighters, ferries, machinery, tools, implements, materials, furniture, and other chattels now or hereafter owned by, and the title to which is, or hereafter shall be, vested in, the Railway Company and used upon or in connection with said line of railroad, or any extension thereof, or other properties which are or shall become subject to the lien of this indenture, including all the right, title, and interest now vested in or hereafter acquired by the Railway Company in and to any and all locomotives and other rolling stock or equipment leased to or possessed by the Railway Company under any equipment trust or agreements, conditional sale agreements or other agreements.

(d) Any and all rights, powers, franchises, and privileges, and any and all rents, issues, tolls, and other income and revenues, which now or at any time hereafter during the continuance of this indenture may be lawfully exercised, enjoyed or received in or about the use, operation, management, maintenance, renewal, alteration or improvement of the railroad, properties, equipment and appurtenances subject to the lien of this indenture.

(e) Any and all telegraph and telephone lines and wires now or hereafter owned by, and the title to which is or hereafter may be vested in, the Railway Company, and used in connection with said line of railway.

(f) Any and all right to use the lines of telegraph now existing, or as the same may hereafter exist, along the line of the said railroad, or any extension thereof, in the same manner and to the same extent as they are now or hereafter may be used by the Railway Company. [fol. 1208] Subject, however, as to such of the said property included in this Part First as is embraced therein or is affected thereby, but only to the extent that such property or any part thereof is so embraced therein or affected thereby, to all or any of the following mortgages, severally and respectively, viz:

Vicksburg and Meridian Railroad Company First Mortgage dated April 1, 1881, to the Farmers' Loan & Trust Company of New York, as Trustee.

The Alabama and Vicksburg Railway Company Consolidated First Mortgage dated April 1, 1889, made by the Railway Company to the Central Trust Company of New York, as Trustee.

The Alabama and Vicksburg Railway Company Second Mortgage dated April 1, 1889, made by the Railway Company to the Central Trust Company of New York, as Trustee.

Second. All the right, title and interest of the Railway Company in and to a certain agreement dated May 1, 1905, of Meridian Terminal Company with Southern Railway Company, Mobile & Ohio Railroad Company, New Orleans and Northeastern Railroad Company, The Alabama and Vicksburg Railway Company (the mortgagor Railway Company), Alabama Great Southern Railroad Com-

pany, and the Standard Trust Company of New York, as trustee, and any and all estate, rights, interests and privileges of the Railway Company under said agreement.

[fol. 1209] Third. All the right, title and interest of the Railway Company in and to 199 shares, of the aggregate par value of \$19,900, of the capital stock of said Meridian Terminal Company, a corporation of the State of Mississippi, the certificates of stock herewith are delivered, or as soon as practicable are to be delivered to the Corporate Trustee.

Fourth. Any and all other railroads and other property of any kind which at any time hereafter, by indenture or indentures supplemental hereto, may be expressly conveyed, mortgaged or assigned, or pledged and delivered, to the Trustees or the Corporate Trustee hereunder, by the Railway Company, or, with its consent, by any one in its behalf, as and for additional security for the bonds issued and to be issued hereunder; the Trustees and the Corporate Trustee being hereby authorized at any and all times to receive such conveyance, mortgage, pledge, delivery, assignment or transfer pursuant to the provisions of this clause as and for additional security may be made subject to any liens, reservations, limitation, conditions and provisions which shall be specified or set forth in such supplemental indenture.

Fifth. Also all the estate, right, title, interest and property of the Railway Company of, in and to any and all lines of railway, including the franchises, appurtenant thereto, and any and all acquisitions, additions, improvements and betterments, and any and all other property of every kind or description (notwithstanding that the same are [fol. 1210] not now particularly set forth in this indenture), which from time to time, in the manner hereinafter provided, shall be purchased, acquired or constructed by the use of any such bonds or other deposited moneys as provided in Section 5, Article 7 of this indenture, other than such of said bonds or proceeds of bonds or other moneys as shall have been delivered or paid to the Railway Company in reimbursement for its expenditures theretofore made, for the acquisition of property that shall have been subjected to the lien of this indenture, or upon property that shall be subject hereto.

Together with all the right, title, estate and interest which the Railway Company now has, or at any time hereafter may acquire, in or to any of the property, real, personal, or mixed, hereby mortgaged, conveyed, pledged and assigned, or intended so to be.

It is intended to include within the grant of this indenture all the right, title and interest of the Railway Company of, in and to all the railroad and railroad property described; and also all the right, title and interest of the Railway Company of, in and to any and all other property herein conveyed, or agreed to be conveyed, to the Trustees, of either of them hereunder.

But nothing in this indenture expressed or implied is intended, or shall be construed, to limit the right or power of the Railway Company, hereby expressly reserved, to own and to hold, or to construct,

or to acquire, free from the lien of this indenture, in any manner other than by the use of bonds hereby secured or the proceeds thereof or any moneys from time to time included in the trust estate under this indenture, tracks or lines of railroad, or branches or extensions, [fol. 1211] or interests therein, or leaseholds, or stocks, or bonds or other property not specified or included in the granting clauses hereof.

To have and to hold the premises and property hereby conveyed and assigned, or intended to be conveyed or assigned, or which may be conveyed or assigned to it by indentures supplemental hereto, unto the Trustees, their successor or successors and assigns, forever;

Subject, however, as to the properties severally embraced therein or affected thereby, to the three several prior mortgages hereinbefore mentioned; it being intended, however, that promptly upon the execution of this indenture, all of the bonds secured by the said three mortgages, shall be cancelled, and the said mortgages in due course satisfied and discharged of record:

But in trust, nevertheless, for the equal and proportionate benefit and security of all the present and future holders of the bonds and coupons issued and to be issued by the Railway Company and authenticated by the Corporate Trustee under this indenture, and for the enforcement of the payment of said bonds and coupons when payable and the performance and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof, so that, except as in this indenture otherwise provided, each and every bond issued and to be issued and authenticated as aforesaid shall have the same right, lien and privilege under this indenture, and so that, subject to the terms hereof, the principal and interest of every such bond shall be [fol. 1212] equally and proportionately secured hereby, as if all such bonds at any time outstanding had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture;

And all of the parties to this indenture hereby expressly declare that this indenture is intended to be, and shall be, construed as a special mortgage and hypothecation of all and singular the hereinbefore described property, rights and privileges, to the amount of \$4,000,000, and of all interest to accrue thereon, unto and in favor of the said Canal Commercial Trust and Savings Bank and Felix E. Gunter (here present and accepting the provisions and stipulations of this indenture), their successors and assigns, as well as in favor of any and all such person or persons, corporation or corporations, as may hereafter become the holder or holders or owner or owners of the aforesaid bonds and interest coupons secured by this indenture, or either or any of them, or of any number thereof; and, moreover, the Railway Company promises for and binds itself and its successors that it will not alienate, deteriorate or encumber, or in anywise affect, the hereinbefore described mortgaged and hypothecated properties and their appurtenances, or any part or parcel thereof, to the prejudice of this indenture, save and except in so far as and in the

manner set forth in this indenture; the sole and true intent and meaning of this declaration and covenant being to state expressly, and to confirm this deed of trust and mortgage by stating expressly, the obligations of the mortgagor in the language customary in the State of Mississippi in executing mortgages on property therein; [fol. 1213] And it is hereby covenanted and declared that all such bonds, with the coupons for interest thereon, are to be authenticated and delivered by the Corporate Trustee and to be issued, and that the mortgaged premises are to be held by the Trustee, upon and subject to the following covenants, conditions, uses and trusts:

Article One

Section 1. The authorized issue of bonds under this indenture is limited so that the aggregate principal amount thereof of any one time outstanding shall never exceed four million dollars (\$4,000,000).

These bonds shall be of the denomination of \$1,000 each, and shall be numbered consecutively from one upwards. They shall bear date of April 1, 1921, and shall be payable April 1, 1951, and shall bear interest at the rate of six per cent per annum, payable semi-annually, and as an entirety shall be subject to redemption at the option of the Railway Company on any interest-payment date prior to maturity at 105 per cent of the principal sum and accrued interest, and otherwise shall conform substantially to the form for bond as set forth in the preamble of this indenture.

Section 2. From time to time the bonds issuable under this indenture shall be executed on behalf of the Railway Company by its President, or Vice President, under its corporate seal attested by its Secretary or an Assistant Secretary, and shall be delivered to the [fol. 1214] Corporate Trustee for authentication by it; and thereupon, as provided in this indenture and not otherwise, the Corporate Trustee shall authenticate the said bonds and shall deliver the same to the Railway Company or on its written order. Only such bonds as shall bear thereon endorsed a certificate of authentication substantially in the form hereinabove recited, executed by the Corporate Trustee, shall be secured by this indenture or be entitled to any right or benefit hereunder. No bond and no coupon thereunto appertaining shall be valid or obligatory for any purpose until such certificate shall have been duly endorsed on such bond; and such authentication by the Corporate Trustee upon any such bond shall be conclusive evidence that the bond so authenticated has been duly issued hereunder and that the holder is entitled to the benefit of the trust hereby created.

On request of the Railway Company, bonds shall be authenticated and shall be delivered hereunder in advance of the registration or recording of this indenture.

In case any of the officers of the Railway Company who shall have signed and sealed any of the bonds issuable under this indenture shall cease to be such officers of the Railway Company before the bonds so signed and sealed shall have been actually authenti-

ated and delivered by the Corporate Trustee, such bonds, nevertheless, may be authenticated and delivered and issued as though the persons who signed and sealed such bonds had not ceased to be officers of the Railway Company; and also any such bond may be signed and sealed in behalf of the Railway Company by such persons as at the actual date of the execution of such bond shall be the proper officers of the Railway Company, although, at the date of such bond any such person shall not have been an officer of the Railway Company. The coupons to be attached to the bonds shall be attested by the engraved facsimile signature of the present Treasurer or of any future Treasurer of the Railway Company, and the Railway Company may adopt and use for that purpose the engraved facsimile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually authenticated and delivered.

The Corporate Trustee shall not authenticate or deliver any bond unless all coupons thereon then matured shall have been detached and cancelled.

Section 3. The Railway Company and the Trustees may deem and may treat the bearer of any bond or coupon hereby secured as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes, and neither the Railway Company nor either of the Trustees shall be affected by any notice to the contrary.

Section 4. Without unreasonable delay, the Railway Company will cause engraved definitive bonds to be prepared and executed. Until the engraved definitive bonds shall be prepared, the Railway Company may execute, and, upon the request of the Railway Company, the Corporate Trustee shall authenticate and deliver, in lieu of such definitive engraved bonds and subject to the same provisions, limitations and conditions, temporary bonds substantially of the tenor of the bond hereinbefore recited, with or without coupons, [fol. 1216] and with appropriate omissions, insertions and variations as may be required. Pending the preparation of the engraved definitive bonds, such temporary bonds shall be exchangeable, for other temporary bonds of like aggregate principal amount.

Upon surrender of such temporary bonds for exchange and without expense to the holder, the Railway Company shall prepare and execute, and upon cancellation of such surrendered bonds the Corporate Trustee shall authenticate and shall deliver in exchange therefor, engraved definitive bonds for the same aggregate principal amount as the temporary bonds surrendered and otherwise in accordance with said temporary bonds. Until so exchanged, the temporary bonds in all respects shall be entitled to the same lien and security of this indenture as the engraved definitive bonds to be issued and authenticated hereunder. Interest on said temporary bonds shall be paid to the bearer thereof upon notation thereon of such payments if such temporary bonds shall have been issued without coupons, or, if such temporary bonds shall have been issued with

coupons, upon presentation and surrender of such coupons as they mature.

Section 5. In case any bond issued under this indenture or the coupons thereto appertaining shall become mutilated or be destroyed, the Railway Company, in its discretion, may issue, and thereupon the Corporate Trustee shall authenticate and deliver, a new bond of like tenor and date, bearing the same serial number, in exchange and substitution for and upon cancellation of the mutilated bond and its coupons, or in lieu of and substitution for the bond and its [fol. 1217] coupons so destroyed. The applicant for such substitute bond shall furnish to the Railway Company and the Corporate Trustee evidence to their satisfaction, respectively, of the destruction or mutilation of such bond and its coupons so destroyed or mutilated; and said applicant also shall furnish such indemnity to both the Railway Company and the Trustees, respectively, as in their discretion they may require. The Railway Company and the Trustees may comply with the laws in respect of the replacement of mutilated or destroyed bonds at the time in force in any jurisdiction wherein such bonds were expressed to be payable.

Article Two

Section 1. Bonds secured by this indenture for the aggregate principal amount of two million, four hundred and twenty-three thousand (\$2,423,000) dollars, forthwith upon the execution of this indenture may be executed by the Railway Company, and thereupon without further corporate action upon the part of the Railway Company shall be authenticated by the Corporate Trustee.

Such bonds so authenticated shall be delivered upon the written order of the Railway Company as follows:

(a) Bonds in the amount of one million, six hundred and seventy-five thousand (\$1,675,000) dollars shall be delivered to the Secretary of the Treasury of the United States as collateral security upon a note for one million, three hundred and ninety-four thousand (\$1,394,000) dollars, covering a loan for that amount to the Railway Company for the payment, cancellation and retirement of a like amount of the existing mortgage bonds of the Company.

(b) Bonds in the amount of five hundred and forty-three thousand (\$543,000) dollars to be delivered to Canal-Commercial Trust and Savings Bank, Trustee, to be held as collateral security upon four notes for the aggregate amount of five hundred and forty-two thousand, nine hundred (\$542,000) dollars, to be issued in refunding, cancellation and retirement of a like amount of the existing mortgage bonds of the Company:

Names of payee	Amount of note	Amount of security
The Sterling Trust, Limited.....	\$468,900	\$469,000
G. T. Bonner, Trustee for:		
Mrs. Maud Cabot.....	24,000	24,000
Mrs. Mary Isabel Lockwood.....	25,000	25,000
Mrs. Mabel Stein.....	25,000	25,000

(c) Bonds in the amount of two hundred and five thousand (\$205,000) dollars to be delivered to the Secretary of the Treasury of the United States as collateral security upon a note for one hundred and seventy thousand (\$170,000) dollars, covering a loan for that amount to the Railway Company for purchase of locomotives.

The Railway Company covenants that as soon as practicable after the cancellation of said Vicksburg and Meridian First Mortgage Bonds and said The Alabama and Vicksburg Railway Second Mortgage Bonds, it will obtain from the respective Trustees of the [fol. 1219] said mortgages proper instruments satisfying and discharging said mortgages, and will cause such instruments of satisfaction and of discharge to be filed and recorded in the proper public offices.

The Railway Company further covenants that as and when any payments are made by it in reduction of the principal of the notes upon which any of the bonds are deposited as collateral under this section, the excess of the collateral thereby relieved over the amounts so paid in principal of the note may be returned to the Trustees to be dealt with by them as a portion of the unissued bonds created under this indenture.

Section 2. Bonds in the amount of one million, five hundred and seventy seven thousand (\$1,577,000) dollars may be executed by the Railway Company, and thereupon without further corporate action upon the part of the Railway Company shall be authenticated by the Trustee.

Such bonds so authenticated shall be held by the Corporate Trustee, and shall be issued and delivered only upon written orders of the Railway Company.

Article Three

The Railway Company covenants as follows:

Section 1. Duly and punctually the Railway Company will pay or will cause to be paid the principal and interest of every bond secured by this indenture, at the dates and places and in the manner mentioned in said bonds or in the coupons thereto belonging respectively, according to the true intent and meaning thereof. The interest on the bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and such coupons shall be cancelled forthwith upon the payment thereof. As a condition precedent to the payment of

any coupon for interest on a bond, the Railway Company may require the bearer of such coupon to furnish such evidence as will enable the Railway Company to determine whether it is required by law to deduct or to retain any tax or taxes from the interest so payable.

Section 2. At all times, until the payment of the principal of the bonds hereby secured, the Railway Company will maintain an office or agency in the City of New Orleans, Louisiana, where the bonds and coupons may be presented for payment and where notices and demands in respect of the bonds and coupons of this indenture may be served. From time to time the Railway Company will give notice to the Corporate Trustee of the location of any such agency or agencies and of any change of location thereof. In case the Railway Company shall fail to maintain any such agency or shall fail to give such notice of the location or of any change in the location thereof, presentation and demand may be made and notices may be served at the office of the Corporate Trustee in the City of New Orleans, Louisiana, but the Corporate Trustee shall be under no duty to the Railway Company or to any other corporation or person in respect of any such presentation, demand or notice.

[fol. 1221] Section 3. At any and all times the Railway Company will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered by any other corporation or person obligated to the Railway Company so to do, all and every such further acts, deeds, conveyances, mortgages and transfers and assurances in the law, as the Trustees or the Corporate Trustee shall reasonably require, for the better assuring, conveying, mortgaging, assigning and confirming unto the Trustees, all and singular the hereditaments and premises, estates and property hereby conveyed or assigned, or intended so to be, or which the Railway Company hereafter may become bound to convey or assign to the Trustees.

Section 4. The Railway Company from time to time will pay or will cause to be paid all taxes, assessments and governmental charges the lien whereof would be prior to that of this indenture, lawfully imposed upon the mortgaged premises or upon any part thereof, or upon the income and profits thereof, including all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustees or either of them in respect of the mortgaged premises, so that the lien and priority of this indenture thereon shall be fully preserved at the cost of the Railway Company, without expense to the Trustees or to the bondholders; provided, however, that the Railway Company shall have the right to contest, by legal proceedings, any tax, assessment or charge, and pending such contest may delay or defer the payment thereof.

[fol. 1222] Section 5. The Railway Company will not voluntarily create or suffer to be created any debt, lien or charge which would be prior to the lien of this indenture upon the mortgaged premises or any part thereof, or upon the income thereof.

The Railway Company, without unreasonable delay, will pay or will cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers, and others, which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof or the income thereof; provided, however, that the Railway Company shall have the right to contest, by legal proceedings, any such debt, lien or charge, and pending such contest may delay or defer the payment or discharge thereof.

Section 6. The Railway Company will keep full and complete records and accounts showing the amounts of bonds issued hereunder, and the several purposes for which bond and deposited moneys were used or expended, and the amounts of such several expenditures. Such records and accounts shall be open at all times to the inspection of the Corporate Trustee.

Section 7. The Railway Company will keep and maintain in good order and condition all equipment at any time subject to the lien of this indenture, and when worn out, abandoned or otherwise dis- [fol. 1223] posed of, will replace with equipment of like value (of the same or of such different character as the Railway Company may elect) any and all equipment owned by the Railway Company at the date of this indenture, and any and all equipment acquired after the date of this indenture.

Section 8. The Railway Company diligently will maintain, use and operate, or will cause to be maintained, used and operated, the mortgaged premises, and will do all lawful acts and take all lawful measures that reasonably may be required to preserve and protect the mortgaged premises, and the earnings, income, rents, issues and profits thereof.

Section 9. The Railway Company will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained.

Section 10. The Railway Company will duly record this indenture in the proper public offices, and will deliver to the Corporate Trustee any pledged stock not herewith delivered to the Corporate Trustee.

Article Four

Section 1. The Corporate Trustee at any time may transfer into its name, as Corporate Trustee hereunder, all or any shares of stock, the certificates of which shall have been pledged with and delivered to it hereunder. In its discretion it may hold such certificates in the name of the registered holder thereof at the time of such pledge, [fol. 1224] or it may transfer the same into the name of its nominee or nominees, provided in either case that the same, with instruments of assignment and powers of transfer in blank, be held by the Corporate Trustee.

The Corporate Trustee may do whatever it may be advised may be necessary for the purpose of maintaining, preserving, renewing or extending the corporate existence of any company of which any shares shall then be held by the Corporate Trustee hereunder, and for such purposes, from time to time, it may sell, assign, transfer and deliver so many shares of the stock of such company as may be necessary to qualify persons to act as directors of, or in any other official relation to, said company. Whenever requested by the Railway Company, by a writing signed by its President or a Vice President, the Corporate Trustee shall assign and transfer to persons designated by the Railway Company a sufficient number of any shares that then shall be held by the Corporate Trustee hereunder, to qualify such persons to act as directors of, or in any official relation to, the company which issued such shares; provided, however, that in every case the Corporate Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Section 2. Unless and until (1) a receiver shall have entered into possession of the mortgaged premises or part thereof, or unless or until (2) the Trustees, or either of them, shall have entered into possession of the mortgaged premises or part thereof under the power herein granted, or unless and until (3) some one of the events of default enumerated in Section 2 of Article Five of this indenture shall [fol. 1225] have happened and be subsisting, (a) the Railway Company shall be entitled to receive all dividends on all shares of stock, which shall be subject to this indenture although the same may have been transferred to the Corporate Trustee; (b) the Corporate Trustee shall deliver to the Railway Company suitable orders in favor of the Railway Company, or its nominee, for the payment of such dividends, and the Railway Company may collect such dividends, and the Corporate Trustee at once shall pay over to the Railway Company and such dividends which may be collected or be received by it; and (c) in case any bonds, obligations or other securities shall become subject to the lien of this indenture, the Railway Company shall be entitled to receive any and all interest or income accruing thereon or therefrom:

Provided, however, and hereby it is declared and agreed that, except as in this indenture otherwise expressly provided, the Railway Company shall not be entitled to receive, and the Corporate Trustee shall not pay over to the Railway Company, any stock dividends that may be declared on any shares of stock pledged under this indenture, or any cash dividends on any such shares that may become payable upon or in the course of the dissolution, liquidation or winding up of the company which issued such stock, or in any way shall be chargeable to or payable out of capital or shall be paid out of the proceeds of any sale of its property, it being the intention that the Railway Company shall be entitled to receive only payments made out of the rents, revenues, income or proceeds of operation of such company.

[fol. 1226] Section 3. In case, upon a dissolution or liquidation, or upon any sale of capital assets, any sum shall be paid upon any of

the pledged shares of stock,—then, in any such case, any such sum shall be received by the Corporate Trustee and be included in the deposited moneys to be held, used and applied as provided in Section 5 of Article 7 of this indenture.

Section 4. Unless and until (1) a receiver shall have entered into possession of the mortgaged premises or part thereof, or unless and until (2) the Trustees, or either of them, shall have entered into possession of the mortgaged premises or part thereof under the power herein granted, or unless and until (3) some one of the events of default enumerated in Section 2 of Article Five of this indenture shall have happened and be subsisting,—the Railway Company shall have the right to vote upon; and to give any consent in respect of, any shares of stock subject to this indenture, for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such shares were not subject to this indenture; and from time to time, upon demand of the Railway Company, the Corporate Trustee forthwith shall execute and deliver, or shall cause to be executed and delivered, to the Railway Company, or its nominees suitable powers of attorney or proxies to vote upon, and to give any consent in respect of, any shares of stock which shall have been transferred to the Corporate Trustee. Every such instrument shall bear on its face the following statement: "The powers hereby conferred shall not be exercised for any purpose inconsistent with the provisions or purposes of the First Mortgage of The Alabama and Vicksburg Railway Company dated April 1, 1921."

[fol. 1227] Section 5. With the consent of the Railway Company, the Corporate Trustee in behalf of the Trustees may join in any plan or reorganization in respect of any pledged stock, and may accept new securities issued in exchange therefor under such plan. In case any of the events of default specified in Section 2 of Article Five of this indenture shall have happened and be subsisting, the Corporate Trustee as aforesaid shall be entitled to take such steps without the consent of the Railway Company.

In case the Corporate Trustee shall not join in a plan of reorganization as aforesaid in respect of such stock, then the Corporate Trustee shall receive any portion of the proceeds of any sale accruing or receivable in respect of such stock, and shall include such moneys in the deposited moneys to be held, used and applied as provided in Section 5 of Article 7 of this indenture.

Section 6. Anything in this indenture to the contrary notwithstanding, any company all or part of whose capital stock shall be subject to this indenture, may be merged into or consolidated with, or all or any part of its property may be sold or conveyed to the Railway Company. In the event of such consolidation or merger or sale, this indenture shall become and be a lien upon the property of the company so consolidated or merged with, or the property so sold or conveyed to, the Railway Company, with the same force and effect as if expressly conveyed by this indenture; and, if thereunto requested by the Corporate Trustee, the Railway Company forth-

with shall execute and deliver to the Trustee appropriate conveyances and assignments to evidence such lien.

[fol. 1228] Section 7. The Corporate Trustee in behalf of the Trustees may make any exchange, substitution, cancellation or surrender of securities required for the accomplishment of the purposes of this Article Four and may receive the opinion of any counsel approved by it (who may be of counsel for the Railway Company) as to the legal effect of any action taken or to be taken hereunder, and as to the steps necessary to be taken to consummate the same, and as to any other matter under this Article; and such opinion shall be full protection to the Trustees for any action taken or omitted pursuant thereto.

Article Five

Section 1. In case any coupon on any of the bonds hereby secured shall have been funded or extended by or with the consent of the Railway Company, such coupon so funded or extended shall not be entitled, in case of default hereunder, to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all of said bonds that shall be outstanding and of all coupons that shall not have been so funded or extended. If any coupons on any of said bonds at or after maturity shall be owned by the Railway Company, then such matured coupons shall not be entitled to the benefit or security of this indenture; and the Railway Company covenants that all such coupons so owned by it at or after their maturity shall promptly be cancelled.

[fol. 1229] Section 2. In case of the happening of one or more of the following events—elsewhere in this indenture sometimes termed “events of default”—this is to say:

(1) Default in the due and punctual payment of the principal of any of the bonds hereby secured, when the same shall have become due and payable, whether at maturity or by declaration or otherwise:

(2) Default in the payment of any installment of interest on any of the bonds hereby secured, when and as the same shall have become payable as therein and herein expressed and such default shall have continued for the period of six months:

(3) Default in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such default shall have continued for the period of six months after written notice thereof shall have been given to the Railway Company by the Corporate Trustee or by the holders of ten per cent in principal amount of the bonds hereby secured then outstanding:

Then, and in each and every such case of default, and during the continuance thereof, the Trustees personally or by their agents or attorneys, or (if by written notice to the Railway Company and to

the Individual Trustee the Corporate Trustee shall declare that it deems it advisable) the Individual Trustee only, personally or by his [fol. 1230] agents or attorneys, may enter upon the mortgaged premises, and may exclude the Railway Company, its agents and servants, wholly therefrom; and having and holding the same, either personally or by receivers, agents, servants or attorneys, may use, operate, manage and control said premises, regulate the tolls for the transportation of passengers and freight thereon and conduct the business thereof to the best advantage of the holders of the bonds and other indebtedness hereby secured; and upon every such entry, at the expense of the trust estate, from time to time may make all such necessary or proper repairs, renewals, replacements and useful alterations, additions, betterments and improvements to said premises as to the Trustees or Trustee in possession may seem judicious, and may purchase or otherwise secure the use of additional engines, rolling stock, tools and machinery for use thereon, and either in the name of the Railway Company or otherwise, may manage and operate the mortgaged premises and exercise all rights and powers of the Railway Company in respect thereof, and the Trustees or Trustee in possession shall be entitled to collect and receive all tolls, earnings, income, rents, issues and profits thereof; and after deducting all expenses incurred hereunder and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon said premises or any part thereof, as well as just and reasonable compensation for the services of the Trustees and for all agents, clerks, servants and other employees by them or either of them properly engaged, the Trustees or Trustee in possession shall apply the moneys arising as aforesaid as follows:

[fol. 1231] In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest thereon at the same rates as were borne by the bonds on which such interest shall be in default; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds hereby secured shall have become due by declaration or otherwise, to the payment of the amounts due for interest and principal on said bonds, ratably to the persons entitled to such payment without any discrimination or preference.

These provisions, however, are not intended in anywise to modify the provisions of Section 1 of this Article Five, but are subject thereto.

In case the Trustees or either of them shall have entered or shall have elected to enter as aforesaid, or in case a receiver of the property of the Railway Company shall have been appointed, or in case default shall be made and shall continue as specified in this Section 2 of Article Five, the Corporate Trustee shall be entitled to vote on all shares of stock then subject to this indenture, and, for the benefit of the holders of the bonds hereby secured, shall be entitled to collect and receive all dividends on the shares of stock that then shall be subject to this indenture, and all sums payable for principal, interest, or otherwise upon any bonds or obligations that then shall be sub-

ject to this indenture, and to apply as hereinbefore provided the net [fol. 1232] moneys received; and, as holders of any such shares of stock and of any such bonds or obligations, to perform any and all acts, or to make or execute any and all transfers, requests, requisitions or other instruments, for the purpose of carrying out the provisions of Section 2 of Article Five; but in the event that a receiver of the mortgaged railroad shall have been appointed and shall be in possession thereof, the Corporate Trustee from time to time in its discretion may, and if requested by the holders of a majority in amount of the bonds hereby secured it shall, turn over to such receiver any part or all of the interest moneys and cash dividends declared and paid out of current earnings, so collected by it, and may cooperate with such receiver in managing and operating the entire system of the Railway Company, in such manner as the Corporate Trustee shall deem for the best interest of the holders of the bonds hereby secured.

Section 3. In case of the happening of any of the events of default enumerated in Section 2 of this Article Five, then and in each and every such case of default, during the continuance of such default, either (a) the Trustees (or, if the Trustees deem it advisable, the Individual Trustee alone) personally or by agent of attorney, with or without entry, in their or his discretion may sell subject to the liens thereon which then shall be prior and superior to the lien of this indenture, to the highest and best bidder, all and singular the mortgaged premises and all right, title and interest therein and right of redemption thereof, which sale shall be made at public auction at such place and at such time and upon such terms as the [fol. 1233] Trustees or the Individual Trustee, acting therein, may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; and (b) the Trustees, or either of them, may proceed to protect and to enforce the rights of the Trustees and of the holders of the bonds and indebtedness secured by this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustees or either of them acting therein, being advised by counsel, may deem most effectual to protect and enforce any of their rights or duties hereunder.

Section 4. In case (1) default shall be made in the payment of any installment of interest on any bond hereby secured, and any such default shall have continued for the period of six months, then at any time, during the continuance of such default, upon the written request of the holders of twenty-five per cent in principal amount of the bonds hereby secured then outstanding, the Corporate Trustee, by notice in writing delivered to the Railway Company, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration, the same shall become and be immediately due and payable, anything

in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable and before any sale of the property sub-[fol. 1234] ject to the lien of this indenture shall have been made pursuant to the provisions of this Article Five, all arrears of interest upon all of said bonds, with interest upon overdue installments of interest at the same rates respectively as were borne by the respective bonds of which installments of interest may be overdue, shall either be paid by the Railway Company or be collected out of the mortgaged premises, and all defaults under this indenture shall have been remedied—then and in every such case the holders of a majority in principal amount of the bonds hereby secured, then outstanding, by written notice to the Railway Company and to the Corporate Trustee, may waive and rescind such default and its consequences; but no such waiver or rescission shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustees or either of them shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustees, then and in every such case the Railway Company and the Trustees shall be restored to their former position and rights hereunder in respect of the mortgaged premises; and all rights, remedies and powers of the Trustees shall continue as though no such proceeding had been taken.

Section 5. Upon the written request of the holders of twenty-five per cent in principal amount of the bonds hereby secured, in case of any continuing default as mentioned in Section 2 of this Article Five, it shall be the duty of the Trustees, upon being indemnified as [fol. 1235] hereinafter provided, to take all steps needful for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustees, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds hereby secured; but anything in this indenture to the contrary notwithstanding, the holders of seventy-six per cent in principal amount of the bonds hereby secured then outstanding, from time to time shall have the right to direct and control the action of the Trustees in any proceedings under this Article Five of this indenture; provided, however, that nothing in this Section 5 shall be deemed (a) to require the Trustees or either of them to take any action which in the opinion of the Corporate Trustee would be prejudicial to non-assenting bondholders, or (b) to require the Corporate Trustee to perform in any jurisdiction any act which by the law of such jurisdiction the Corporate Trustee is forbidden or disabled to perform.

Section 6. In the event of any sale, whether made under the power of sale herein granted, or under or by virtue of **judicial proceedings**, or of some judgment or decree of foreclosure and sale, the whole of the mortgaged premises, including stock, shall be sold in one parcel and as an entirety, unless such sale as an entirety be impracticable by reason of some statute or other cause, or unless the holders of a majority in principal amount of the bonds hereby secured, then out-[fol. 1236] standing, shall in writing request the Trustees to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as shall be specified in such request.

Section 7. Notice of any sale pursuant to any provision of this indenture shall state the time when and the place where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive calendar weeks prior to such sale in one newspaper published in the County of Hinds, State of Mississippi, and in one newspaper published in the City of New Orleans, State of Louisiana, and otherwise as to the period of notice and publication thereof as may be required by law.

Section 8. From time to time the Trustees or Trustee, or other person, acting therein, may adjourn any sale to be made under the provisions of this indenture, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned.

Section 9. Upon the completion of any sale or sales under or by virtue of this indenture, the Trustee shall execute and shall deliver to the accepted purchaser a good and sufficient deed or other instruments conveying, assigning and transferring the property and franchises sold. The Trustees, and the Corporate Trustee alone, and their re-[fol. 1237] spective successors, are hereby appointed the attorneys irrevocable of the Railway Company, in its name and stead, to make all necessary conveyance and assignments of property, and all necessary transfers of shares of stock and other property sold, and for that purpose they may execute all necessary deeds and instruments of assignments and transfer, and may substitute one or more persons with like power, the Railway Company hereby ratifying and confirming all that its said attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, the Railway Company, if so requested by the Trustee, shall join in the execution and delivery of such conveyances, assignments and transfers.

Any such sale made under or by virtue of this indenture, whether under the power of sale herein granted or pursuant to judicial proceedings, shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Railway Company, in and to the premises sold, and shall be a perpetual bar, both at law and in equity, against the Railway Company, its successors and assigns, and against any and all persons claiming or to claim the premises sold

or any part thereof, from, through or under the Railway Company or its successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by this indenture shall be held and taken to be fixtures and appurtenances of the mortgaged railroad.

[fol. 1238] Section 10. The receipt of the Corporate Trustee or other person authorized to receive the same, for the purchase money, shall be a sufficient discharge therefor to any purchaser of the property or any part thereof sold as aforesaid; and no such purchaser, or his representatives, grantees, or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 11. In case of any sale under the provisions of this Article Five, whether made under the power of sale herein granted or pursuant to judicial proceedings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Section 12. The purchase money, or the proceeds, or avails of any such sale, whether made under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustees or either of them under any of the provisions of this indenture as part of the trust estate, shall be applied as follows:

[fol. 1239] First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustees, their agents, attorneys and counsel, and of all expenses, liabilities or advances made or incurred by the Trustees or either of them under this indenture, and to the payment of all taxes, assessments or liens prior to the lien of this indenture, except any taxes, assessments or other superior liens subject to which such sale shall have been made.

Second. To the payment equally and ratably of the whole amount then owing or unpaid for principal and interest, upon the bonds and coupons hereby secured with interest on the principal and the overdue installments of interest at the same rates respectively as were borne by the respective bonds whereof the principal or installments of interest may be overdue, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over any other installment of interest, ratably to the aggregate of such principal and accrued and unpaid interest, except as otherwise provided in Section 1 of this Article Five.

Third. To the payment of the surplus, if any, to the Railway Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

Section 13. Upon any sale as aforesaid, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to use and apply any bonds and any matured and unpaid interest obligations secured by this indenture, by presenting the bonds or other evidence of any such indebtedness hereby secured so that there may be credited as paid thereon the sums applicable to such payment pursuant to the provisions of Section 12 of this Article Five; and such purchaser shall be credited on account of the purchase price of the property purchased, with the sums payable out of such net proceeds on the bonds and coupons so presented; and at any such sale any bondholder or any other person may bid for and purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

Section 14. The Railway Company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force; nor will it claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the mortgaged premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision contained in this indenture or to, the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right conferred by any statute enacted by any State, or otherwise, to redeem the property so sold, or any part thereof; and [fol. 1241] it hereby expressly waives all benefit and advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustees or either of them, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Section 15. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the Trustees or of the bondholders under this indenture, the Trustees shall be entitled to exercise the right of entry herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default, as hereinbefore provided; and as matter of right the Trustees shall be entitled to the appointment of a receiver of the mortgaged premises, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer.

Section 16. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or for the execution

of any trust hereof or for the appointment of a receiver, or for any other remedy hereunder, unless the holders of twenty-five per cent in principal amount of the bonds hereby secured, then outstanding, shall have requested the Trustees in writing to take action in respect of the matter complained of, and shall have afforded to them a reasonable opportunity either to proceed to exercise the powers hereinbefore [fol. 1242] granted, or to institute such action, suit or proceeding in their own name; nor unless also such bondholders shall have offered to the Trustees security and indemnity satisfactory to them against the costs, expenses and liabilities to be incurred therein or thereby, nor unless the Trustees shall have refused or neglected to act on such notice, request and indemnity; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustees, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

All rights of action under this indenture may be enforced by the Trustees without the possession of any of the bonds or coupons hereby secured or the production thereof on the trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustees, or either of them, shall be brought, as the case may be, in their or its or his own name, and any recovery of judgment shall be for the ratable benefit of the holders of said bonds and coupons hereby secured.

[fol. 1243] Section 17. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 18. No delay or omission of the Trustees, or either of them, or of any holder of bonds secured by this indenture, to exercise any right of power arising from any default continuing as aforesaid shall impair any such right of power, or shall be construed to be a waiver of any such default or an acquiescence therein.

Section 19. No recourse shall be had for the payment of the principal of or the interest upon any bond issued under this indenture, or for any claim based thereon, or otherwise in respect thereof or of this indenture, against any incorporator, stockholder, officer, or director, past, present or future, of the Railway Com-

pany, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this indenture and all the bonds and coupons hereby secured are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by any incorporator, stockholder, officer or director, past, present or future, of the Railway Company, because of the incurring of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants, promises or agreements contained in this indenture or in any of the bonds or coupons issued hereunder or to be implied herefrom; and any and all personal liability of every name and nature of, and any and all rights and claims against [fol. 1244] every such incorporator, stockholders, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations hereby secured.

Section 20. The Railway Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for the period of six months, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall have become payable, whether at the maturity of said bonds, or upon a declaration as authorized by this indenture, or upon a sale as set forth in Section 11 of this Article Five,—then, upon demand of the Corporate Trustee, the Railway Company will pay to the Corporate Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest upon the overdue principal and installments of interest at the same rates as were borne by the bonds whereof the principal or installments of interest shall be overdue; and in case the Railway Company shall fail to pay the same forthwith upon such demand, the Trustees, or either of them (the other having in writing given assent thereto), in their, his or its own names or name, and as the trustees or trustee of an [fol. 1245] express trust, shall be entitled to recover judgment against the Railway Company for the whole amount so due and unpaid.

The Trustees or either of them shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustees to recover such judgment shall not be affected by an entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien hereof; and in case of the sale of the property subject to this indenture, and of the application of the proceedings of sale to the payment of the debt secured by

this indenture, the Trustees, or either of them (the other having in writing given assent thereto), in their, his or its own names or name, and as trustees or trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued under this indenture and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustees or either of them, and no levy of any execution upon any such judgment upon property subject to this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the property or any part of the property subject to this indenture, or any rights, powers or remedies of the holders of the bonds hereby secured, but [fol. 1246] such lien, rights, powers and remedies of the Trustees and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustees, or either of them, under this Section 20 of Article five shall be applied by the Trustees towards payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such money shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Five), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Corporate Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Nevertheless, the foregoing provisions of this Section 20 of Article Five and the powers hereby granted to the Trustee are strictly subject to the limitation that, if by the commencement of any action at law to recover judgment for any amount due and unpaid upon said bonds or coupons or hereunder, or by the exercise of any other remedy prior to or concurrently with proceedings to enforce the lien of this indenture upon the mortgaged premises, the lien of this indenture upon any of the mortgaged premises or the security hereby provided for would be surrendered, waived or lost, then, despite the foregoing provisions of this Section 20 of Article Five, neither the trustees, nor either of them, shall have power to commence such [fol. 1247] action at law or to exercise such prior or concurrent remedy.

In case any statute now in force which provides that the commencement of an action to recover a debt secured by mortgage shall be deemed a waiver of the security thereof, or which prohibits the exercise of any other remedy prior to or concurrently with proceedings to enforce the lien of a mortgage upon the premises mortgaged, or impedes or suspends the virtue of any of the foregoing provisions of this Section 20 of Article Five, of which statute the Railway Company might take advantage despite said provisions, shall hereafter be repealed or cease to be in force, such statute shall not be deemed to have become or be a part of the contract contained in this indenture.

Nothing in this Section 20 of Article Five or elsewhere in this indenture or in the bonds or in the coupons attached to the bonds shall affect or impair the obligation of the Railway Company, which is unconditional and absolute, to pay the principal and interest of the bonds to the respective holders of the bonds and to the respective holders of the coupons attached to the bonds, at the times and places in such bonds and coupons stated, nor affect or impair the right of action, which is also absolute and unconditional, of such holders to enforce such payment.

[fol. 1248] Section 21. At any time hereafter before full payment of the indebtedness secured hereby, and whenever it shall deem expedient for the better protection or security of such indebtedness (although then there shall be no default entitling the Trustees to exercise the rights and powers conferred by Section 2 or Section 3 of this Article Five), the Railway Company, with the consent of the Corporate Trustee, may surrender and may deliver to the Trustees, or either of them, full possession of the whole or any part of the mortgaged premises, and may authorize the Corporate Trustee to collect the dividends and interest on all shares of stock, bonds and other obligations, subject to this indenture, and to vote upon all such shares of stock for any period, fixed or indefinite. In such event the Trustees, or (if the Corporate Trustee shall deem it advisable) the Individual Trustee, shall enter into and upon the mortgaged premises so surrendered and delivered, and shall take and receive possession thereof, for such period, fixed or indefinite, as aforesaid, without prejudice, however, to the right of the Trustees, or either of them, at any time subsequently, when entitled thereto by any provision hereof, to insist upon maintaining and to maintain such possession though beyond the expiration of any such prescribed period; and the Trustees entering upon such possession from the time of entry, shall work, maintain, use, manage, control and employ the mortgaged premises in accordance with the provisions of this indenture, and shall receive and apply the income and revenues thereof as provided in Section 2 of this Article Five. Upon [fol. 1249] application of the Trustee, and with the consent of the Railway Company if then there be no continuing default such as is specified in said Section 2 of this Article Five, and without such consent if then there be such a continuing default, a receiver may be appointed to take possession of, and to operate, maintain and manage, the whole or any part of the mortgaged premises, and the Railway Company shall transfer and deliver to such receiver all such property wheresoever the same may be situated; and in every case, when a receiver of the whole or of any part of said mortgaged premises shall be appointed under this Section 21 of Article Five, or otherwise, the net income and profits of such property shall be paid over to, and shall be received by, the Corporate Trustee for the benefit of the holders of the bonds and interest obligations secured by this indenture.

Section 22. The Trustees shall have power to institute and to maintain such suits and proceedings as they may be advised shall

be necessary or expedient to prevent any impairment of the security hereunder by any acts of the Railway Company, or of others, in violation of this indenture or unlawful, or as the Trustees may be advised shall be necessary or expedient to preserve and to protect their interests and the security and interests of the holders of the indebtedness hereby secured, in respect of the property subject to this indenture, or in respect of the income, earnings, rents, issues, and profits thereof, including power to institute and to maintain suits or proceedings to restrain the enforcement of, or compliance with, or the observance of, any legislative or other governmental [fol. 1250] enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, or observance of, such enactment, rule or order would impair the security hereunder, or be prejudicial to the interests of the holders of the indebtedness hereby secured or of the Trustees.

Section 23. Nothing in this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation, other than the parties hereto and the holders of bonds secured by this indenture, any legal or equitable right, remedy, or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the bonds and coupons hereby secured.

Article Six

Any request or other instrument required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and may be received [fol. 1251] as conclusive, by the Trustees and each of them, if made in accordance with the provisions of this Article Six.

The fact and date of the execution by any person of any such request or other instrument in writing, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in Louisiana, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The aggregate amount of bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the distinctive numbers of such bonds, and the date of his holding the same (which holding the Trustees may deem to continue until the Corporate Trustee shall have received notice in writing to the contrary), may be proved by a certificate executed by

any trust company, bank, bankers, or other depository, wherever situated, setting forth that at the date therein mentioned such person had on deposit with such depository the bonds described in such certificate, or such facts may be proved by the certificate or affidavit of the person executing such request or other instrument as a bondholder, if any such certificate or affidavit shall be deemed by the Corporate Trustee to be satisfactory.

[fol. 1252] The fact and date of execution of any request or other instrument, and the amount and numbers of bonds held by the person so executing such request or other instrument, may also be proved in any other manner which the Corporate Trustee may deem sufficient.

Any request, consent or vote of the owner of any bond shall bind all future owners of the same bond, and of bonds issued in exchange therefor or in place thereof, in respect of anything done or suffered by the Trustees, in pursuance of such request, consent or vote.

Article Seven

Section 1. From time to time, subject to the conditions and limitations in this Article Seven prescribed and not otherwise, and upon delivery to the Corporate Trustee of (1) the written request of the Railway Company, (2) a certified copy of a resolution of its Board of Directors, authorizing such request, and (3) the certificate of its President or one of its Vice-Presidents and its Secretary or Auditor or other chief accounting officer, which certificate shall conform to the provisions hereinafter in this section set forth—the Trustees shall release from the lien of this indenture any part of the rights of ways, lands, leaseholds or other property then subject to this indenture and specified in such resolution and certificate.

Such certificates shall set forth (a) a description of the property a release of which is requested, and that such property is not necessary or advantageous for the operation, maintenance or use of any of the lines of railroad which are then subject to the lien of this indenture or for use in connection with the business of the Railway Company, or that the release thereof is required as an incident to changes or modification in right of way or terminals; (b) that the continuity of the lines of the Railway Company will not be broken by the sale or conveyance of the property of which the release is requested; (c) that the release requested is for the purpose of carrying out an agreement for the sale of the property to be released or for the exchange thereof for other property, or as an incident to some change or modification in right of way or terminals; (d) the selling price of the property a release of which is requested, if such property is to be sold, or, if such property is to be conveyed in exchange for other property, a description of the property, if any, to be received in exchange therefor; and (e) that the fair value of the property a release of which is requested is not greater than the price at which the same is to be sold, or the fair value of the property to be received in exchange, as the case may be; but such statement of value shall not be required in a case where the property is not to be

sold or exchanged but the release thereof shall be requested as incident to some change or modification in right of way or terminals.

Section 2. From time to time the Trustees shall release from the lien of this indenture any franchise or portion thereof which is to be or shall have been surrendered by the Railway Company, and any tracks and structures which are to be or shall have been removed or [fol. 1254] abandoned by it, provided that such surrender of franchise or such removal or abandonment of tracks or structures shall be made or shall have been made pursuant to any agreement with a State, a municipality or other political division or subdivision of a State, or to legal requirement. Such release shall be executed by the Trustees upon delivery to the Corporate Trustee of (1) the written request therefor of the Railway Company, (2) a certified copy of a resolution of its Board of Directors authorizing such request, (3) the certificate of the President or a Vice President and the Secretary or Auditor or other chief accounting officer of the Railway Company setting forth the facts relating to such surrender, removal or abandonment, and setting forth that thereby the continuity of the lines of railroad of the Railway Company have not been and will not be broken, (4) a copy of the agreement or a statement of the legal requirement to comply with which such release is requested, and (5) the written opinion of counsel for the Railway Company that the release requested is necessary for the purpose of complying with such agreement or legal requirement.

Section 3. Any property acquired by the Railway Company in exchange for or to take the place of any property released hereunder, or as incident to a change or modification in right of way or terminals, ipso facto shall become and shall be subject to the lien of this indenture as fully as if specifically mortgaged hereby; but, if requested by the Trustees, the Railway Company will convey the same to them by appropriate deeds and assignments upon the trusts and for the purposes of this indenture. The Railway Company shall deliver to the Corporate Trustee the written opinion of counsel for the Railway Company to the effect either that such deeds or other instruments are sufficient for that purpose, or that any such deeds or other instruments are not necessary to subject any such property to the lien of this indenture as aforesaid.

Section 4. The Railway Company may sell and dispose of any stock, bonds or other securities which at any time may be subject to the lien of this indenture; provided, however, that it shall not so sell or dispose of less than the entire amount of stock (except for the purpose of qualifying directors or officers) of any one corporation held subject to the lien hereof; and provided, further, that such stock, bonds or other securities shall be sold for not less than the full and fair value thereof.

Upon the request of the Railway Company, evidenced by resolution adopted by vote of not less than two-thirds of the whole number of its Board of Directors, and upon the certificate of its President

or one of its Vice-Presidents and of its Secretary or Auditor or other chief accounting officer, stating the price at which such stock, bonds or other securities are to be sold or shall have been sold, and that such price is the full and fair value thereof, and any other facts which the Corporate Trustee may require to be stated, concerning the same, the Trustees shall release such stock, bonds or other securities so sold from the lien of this indenture, and shall deliver the same, if in the possession of either of the Trustees, to the Railway Company or to the purchaser thereof pursuant to the provisions of the resolutions aforesaid; provided, however, that the consideration therefor shall be simultaneously paid over to the Corporate Trustee, and provided, further, that such stock, bonds or other securities shall be sold for not [fol. 1256] less than the full and fair value thereof.

Upon the request of the Railway Company, evidenced by resolution adopted by vote of not less than two-thirds of the whole number of its Board of Directors, and upon the certificate of its President or one of its Vice-Presidents and of its Secretary or Auditor or other chief accounting officer, stating the price at which such stock, bonds or other securities are to be sold or shall have been sold, and that such price is the full and fair value thereof, and any other facts which the Corporate Trustee may require to be stated concerning the same, the Trustees shall release such stock, bonds or other securities so sold from the lien of this indenture, and shall deliver the same, if in the possession of either of the Trustees, to the Railway Company or to the purchaser thereof pursuant to the provisions of the resolutions aforesaid; provided, however, that the consideration therefor shall be simultaneously paid over to the Corporate Trustee, and provided, further, that if the Corporate Trustee shall so request, the full and fair value of such stocks, bonds or other securities so to be released shall be appraised by an appraiser or appraisers appointed by the Railway Company and satisfactory to the Corporate Trustee, and provided, further, that the pledged stock of the Meridian Terminal Company shall not be released unless the Corporate Trustee, in its discretion, shall approve such release.

[fol. 1257] Section 5. All moneys receivable for property released as provided in Sections 1, 2 or 4 of this Article Seven and all moneys receivable as compensation for any property subject to this indenture taken by exercise of the power of eminent domain, and, except as in this indenture otherwise provided, any and all other moneys at any time receivable by the Trustees or either of them, shall be received and held by the Corporate Trustee as part of the trust estate. At the request of the Railway Company and under its direction such moneys shall, from time to time, be paid over to the Railway Company to reimburse it for cost of additional property hereafter acquired by it and subjected to the lien of this indenture.

Section 6. From time to time the Railway Company may amend, alter or modify the Agreement described in Part Second of the granting clauses of this indenture, provided that such changes shall apply equally, ratably or proportionately to the several other railroads

which are parties to such Agreement. With the consent of the Corporate Trustee the Railway Company may make any other amendments, alterations or modifications of said Agreement which the Board of Directors of the Railway Company may resolve to be proper, and the Corporate Trustee is authorized in its discretion to give such consent, if in its judgment it is to the interest of the bondholders, that any such other amendment, alteration or modification of said agreement should be made. The said Agreement as changed as aforesaid shall continue to be subject to the lien of this indenture.

[fol. 1258] Section 7. From time to time, while in possession of the mortgaged premises, the Railway Company shall have full power, in its discretion, and without any action by or notice to the Trustees, to dispose of any portion of the fixtures, machinery, implements, motive power, rolling stock, marine equipment, or other chattels, at any time held subject to the lien hereof, which may have become unserviceable or which it may not be necessary or advantageous longer to retain for use in connection with the mortgaged premises, replacing the same by new fixtures, machinery or other property, which shall become subject to the lien of this indenture.

Section 8. In no event shall any purchaser or purchasers of any property sold or disposed of under any provisions of this Article Seven be required to see to the application of the purchase price.

Section 9. In case one or more of the events of default enumerated in Section 2 of Article Five hereof shall have occurred and shall be continuing, the Trustees shall not be obligated to execute, but in their discretion may execute, on the request of the Railway Company, a release of any of the property subject to this indenture. If such an event of default shall have occurred and shall be continuing, then, in case any of the property subject to this indenture shall be in the possession of a receiver lawfully appointed, the powers in and by this Article Seven conferred upon the Railway Company and which it [fol. 1259] might exercise but for the default, may be exercised by such receiver with the approval of the Corporate Trustee, and if the Trustees or either of them shall be in possession of any of the mortgaged railroad under any provision of this indenture, then all the powers in this Article Seven conferred upon the Railway Company may be exercised by the Trustees as deemed best by the Corporate Trustee in its discretion.

Section 10. A certificate signed by the President or any Vice-President and by the Secretary or Auditor or other chief accounting officer of the Railway Company and the opinion of counsel, as hereinbefore provided, may be received by the Trustees as conclusive evidence of any of the facts mentioned in this Article Seven, and shall be full warrant and protection to the Trustees and each of them for any action taken by them or either of them on the faith thereof.

Article Eight.

Section 1. Nothing contained in this indenture or in any bond hereby secured shall prevent any consolidation or merger of the

Railway Company with any other corporation or corporations, or a series of consolidations or merges or successive consolidations or mergers to which the Railway Company or its successor or successors shall be a party or parties; or any conveyance and transfer (subject to the continuing lien of this indenture and to all the provisions hereof and of any and all supplements hereto) of all the property subject to this indenture as an entirety, to any other corporation [fol. 1260] at that time existing under and by virtue of the laws of any State or States or of the United States and empowered to acquire the same; provided, however, that no such consolidation, merger, or sale shall impair the lien and security of this indenture or any of the rights or powers hereunder of the Trustees or either of them or of the holders of the indebtedness hereby secured. The Railway Company covenants that, upon any such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this indenture shall be expressly assumed by the corporation formed by any such consolidation or merger or purchasing as aforesaid.

Section 2. In case of any such consolidations or merger or series of consolidations or mergers or successive consolidations or mergers, or in case of any such conveyance and transfer, the successor corporation which shall have assumed the due and punctual payment of the principal and interest of the bonds hereby secured and the performance of all the covenants and conditions of this indenture, shall succeed to and be substituted for the Railway Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part; and, upon the order of such successor corporation, instead of the Railway Company, and subject to all the terms, conditions and limitations in this indenture and in any and all supplements hereto prescribed, the Corporate Trustee shall authenticate and shall deliver any of such bonds which previously shall have been signed and delivered [fol. 1261] by the Railway Company to the Corporate Trustee for authentication and any of such bonds which thereafter shall be signed and delivered to the Corporate Trustee for that purpose. And such successor corporation may cause to be signed and issued, either in its own name or in the name of the Railway Company, and under the corporate seal of either company, any and all bonds thereafter to be issued hereunder which theretofore shall not have been signed by the Railway Company and delivered to the Corporate Trustee. All of the bonds so issued shall have in all respects the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof. In case of such consolidation or merger, or conveyance and transfer, such changes in phraseology and form (but not in substance) may be made in the bonds hereby secured, thereafter to be issued, as consequent upon such consolidation or merger or conveyance and trans-

fer, may be appropriate. Neither of the Trustees shall be under any duty to see that any such successor corporation shall assume the payment of the bonds issued hereunder or the performance of the covenants or conditions hereof, except as a condition precedent to the vesting in such successor corporation of the rights and powers conferred by this Section 2 of Article Eight.

In case of the consolidation of the Railway Company with, or the merger into it of, a corporation any of the capital stock of which shall be pledged under this indenture, the lien of this indenture [fol. 1262] thereon shall terminate upon such consolidation or merger becoming effective, and such capital stock, if then in the possession of either of the Trustees, shall be surrendered to the Railway Company or to the successor corporation.

The Railway Company covenants that, in the event of any such consolidation or merger, the property theretofore owned by the company whose capital stock was so pledged shall be subjected to the lien of this indenture by supplement to this indenture duly executed; but such supplement may provide that the lien of this indenture on the property of such company shall be subordinate to the liens which then there may be thereon.

Section 3. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the term "Railway Company" includes and means not only the party of the first part, but also any successor corporation.

Section 4. Any act or proceeding by any provision of this indenture authorized or required to be done or performed by any board, committee or officer of the Railway Company, shall and may be done and performed, with like force and effect, by the like board, committee or officer of a successor corporation.

Section 5. Nevertheless, before the exercise of the powers conferred by the Article Eight, the Railway Company, by instrument [fol. 1263] in writing executed by authority of its Board of Directors, by the affirmative vote of two-thirds of the whole number of directors, and delivered to the Trustees, may surrender any of the powers reserved to it, or to its successors, as aforesaid; and thereupon such power so surrendered shall terminate.

Article Nine

Section 1. Neither of the Trustees shall be answerable for the default or misconduct of the other, or of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; or for the exercise of any discretion or power hereunder, or for anything whatever in connection with this trust, except its or his own willful misconduct or gross negligence; nor shall either of the Trustees be accountable for the use of any bonds authenticated or delivered by the Corporate Trustee hereunder or of the proceeds thereof. The Trustees shall not be under any obligation to take any action towards the execution or enforce-

ment of the trusts hereby created, which in their opinion or in the opinion of the Corporate Trustee shall be likely to involve expense or liability, unless as often as required by the Corporate Trustee one or more of the holders of the bonds hereby secured shall furnish indemnity satisfactory to the Corporate Trustee against such expense or liability. The Trustee shall not be required to take notice of any default under this indenture, and for all purposes they conclusively may assume that there has been no default under this indenture, un- [fol. 1264] less and until notified in writing of such default by the holders of at least ten per cent in amount of the bonds hereby secured then outstanding; nor shall the trustees or either of them be required to take any action in respect of any default, unless requested to take such action in respect thereof by writing signed by the holders of not less than twenty-five per cent in amount of the bonds hereby secured, then outstanding, and tendered indemnity satisfactory to them as aforesaid. The foregoing provisions of this Section 1 of Article Nine are intended only for the protection of the Trustees and shall not affect any discretion or power by any provision of this indenture given to the Trustees or to the Corporate Trustee to determine whether or not they or it shall take action in respect of any default, or any other discretion or power given to the Trustees without such notice or request.

The Trustees shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, and the Railway Company agrees to pay such compensation, as well as all expenses necessarily incurred or disbursed by the Trustees hereunder, and to indemnify the Trustees against any liability or damages incurred or sustained by them under this indenture; and the Trustees shall have a lien for such compensation, expenses and indemnity on the mortgaged premises prior to the lien of the bonds and other indebtedness secured by this indenture.

[fol. 1265] The Trustees shall incur no liability to anybody in acting upon any notice, request, consent, certificate, note, bond, document or paper believed by them to be genuine and to have been signed by the proper person.

When reasonably necessary, the Trustees may advise with legal counsel to be selected and employed by them and the reasonable expenses therefor shall be paid by the Railway Company, and the Trustees shall not be liable for anything done or suffered in good faith by them or either of them in accordance with the opinion of counsel.

The recitals and statement in this indenture and in said bonds and coupons contained shall be taken as statements by the Railway Company alone, and shall not be considered as made by or as imposing any obligation or liability upon the Trustees, nor shall the Trustees be held responsible for the legality or validity of this indenture or of said bonds or coupons or of any supplemental indenture or any instrument of further assurance.

In executing this indenture the Trustees make no covenant or representation respecting the rights of the holders of any of the bonds or coupons secured by this indenture or the title or interest

of the Railway Company in or to the mortgaged premises, or respecting the validity of any assignment under which any property held hereunder was acquired by the Railway Company or assigned to the Trustees, or the sufficiency of the security afforded by the mortgaged premises.

[fol. 1266] The Trustee shall not be responsible for the recording, registration, filing or refiling of this indenture or of any supplemental indenture or of any instrument of further assurance or of any deed or mortgage which they may hereafter receive as hereinabove provided, as a mortgage of real estate or as a chattel mortgage, or for the renewing of the lien hereof or thereof or for the affixing or cancellation of any revenue stamps, nor shall the Trustees be under any duty to give notice to anybody of this or of any such other indenture or instrument, or of any instrument of assignment or pledge supplementing this indenture, and the Trustees may authenticate and deliver the bonds in accordance with the provisions hereof notwithstanding that this indenture shall not have been recorded or filed.

It is expressly understood that the Trustees shall be under no duty or liability in respect of any tax which may be assessed against either the Railway Company or the Trustees or against the owners of the bonds or other indebtedness hereby secured in respect of their interest in the mortgaged premises hereunder or under any future mortgage or supplemental indenture which may be executed to the Trustees under the provisions of this indenture, or against the mortgaged premises hereunder or under any such future mortgage or supplemental indenture, nor shall the Trustees be under any duty to pay or see to the payment of such tax, or to take any notice of any assessment therefor or to give any notice thereof to the holders of the bonds or other indebtedness secured hereby or any other person; nor shall the Trustees be under any duty to accept any mortgage or assignment or pledge to be given under any of the provisions of this indenture, or to do any act which shall necessitate the acceptance by them or either of them of such mortgage or assignment or pledge, if the acceptance thereof shall impose any liability upon them or either of them to see to the payment of any such tax; and for any expense or liability which the Trustees may incur by reason of or growing out of any such tax the Railway Company shall reimburse the Trustees and the Trustees shall have a lien therefor on the mortgaged premises prior to the lien on the bonds and other indebtedness hereby secured.

It shall be no part of the duty of the Trustees to see to the insurance of any part of the property hereby mortgaged, or of any property on which the Trustees may hereafter acquire a lien as above provided, or to effect such insurance.

The trust estate, property and funds shall be primarily liable to third persons for all debts contracted by the Trustees and for all damages to persons or property injured and for salaries and for non-performance of contract, and for all other torts, obligations and liabilities arising during any period wherein the Trustees or either of them shall manage the trust property or any of it, upon entry

or voluntary surrender as aforesaid or otherwise; and the Trustees shall not be personally liable in respect of any such matters.

Any action taken by the Trustees or either of them pursuant to this indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any bond secured hereby, shall be conclusive and binding upon all future owners of the same bond and of bonds issued in exchange therefor or in place thereof.

Any moneys received by the Corporate Trustee under any provision of this indenture may be treated by it, until it is required to pay out the same conformably herewith, as a deposit, without any liability for interest save such as during that time it shall allow to its general depositors or shall agree with the Railway Company to pay thereon.

So long as there shall exist none of the events of default enumerated in Section 2 of Article Five of this indenture, all interest allowed by the Corporate Trustee as aforesaid shall be paid from time to time to the Railway Company or upon its order signed by its President or any Vice President or Treasurer.

Either of the Trustees may become the owner of bonds and coupons secured hereby with the same rights which it or he would have if not Trustee.

Whenever in this indenture the existence of any situation, matter, conclusion of fact of any character, or the sufficiency or validity of any instrument, paper or proceeding, or of any proof of evidence of any fact, shall be prescribed as a condition of or in any manner with respect to any action or proceeding on the part of the Trustees or either of them, or shall be deemed necessary or convenient to be ascertained by either of the Trustees, a certificate signed by the President or any Vice President and also by the Secretary or Auditor or other chief accounting officer of the Railway Company shall, in the [fol. 1269] discretion of such Trustee, be sufficient evidence of any such fact, situation, matter or conclusion; and for the purposes of this indenture the fact of the adoption of a resolution by the Board of Directors of the Railway Company, or of the stockholders, shall be sufficiently evidenced to the Trustees by the certificate of the Secretary or an Assistant Secretary of the Railway Company under its corporate seal. Any such certificate shall be complete protection to the Trustees for any act done or suffered by them or either of them upon the faith thereof except where other evidence is hereinabove specifically prescribed, but the Trustees in their reasonable discretion may require other evidence.

Section 2. The Corporate Trustee, or any successor hereafter appointed, may resign and may be discharged of the trusts created by this indenture, by giving notice, specifying the date when such resignation shall take effect, to the Railway Company and to the bond holders by publication, at least twice a week for four successive weeks, in two newspapers, one published in the Borough of Manhattan, City of New York, and one in New Orleans, Louisiana. Such resignation shall take effect on the day specified in such notice—being not less than forty days after the first publication of such notice—unless previously a successor Corporate Trustee shall have been appointed

as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor.

[fol. 1270] The Individual Trustee may at any time resign by giving notice thereof to the Corporate Trustee and to the Railway Company, specifying the date on which such resignation shall take effect.

Any Trustee may be removed at any time by an instrument in writing under the hands of three-quarters in interest of the holders of the bonds hereby secured, then outstanding.

Any Trustee so removed shall be entitled to reasonable compensation, then accrued and unpaid, and the reimbursement of proper expenses theretofore incurred and not previously reimbursed.

Section 3. In case at any time the Corporate Trustee shall resign or be removed or otherwise become incapable of acting, or in case the Corporate Trustee shall be taken under the control of any public officer or officers or of a receiver appointed by a court, then (except as hereinafter provided) a successor or successors may be appointed by the holders of a majority in principal amount of the bonds hereby secured, then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, that in any such case the Railway Company, by an instrument executed by order of its Board of Directors, may appoint a successor Corporate Trustee which shall act until a successor Corporate Trustee shall be appointed by the bond-[fol. 1271] holders as herein authorized. After any such appointment by the Railway Company, it shall publish notice of such appointment once a week for six successive weeks in two newspapers, one published in the Borough of Manhattan, City of New York, and one in New Orleans, Louisiana; but any new Corporate Trustee so appointed by the Railway Company shall immediately and without further act be superseded by a Corporation Trustee appointed in the manner above provided by the holders of a majority in principal amount of the outstanding bonds hereby secured, if such appointment by such bondholders be made prior to the expiration of one year after the completion of such publication of notice. Every trustee appointed in succession to the Corporate Trustee named as one of the parties of the second part to this indenture, or its successor in the trust, shall be a trust company having an office either in the Borough of Manhattan, City of New York, or in the City of New Orleans, Louisiana, in good standing and having a capital and surplus aggregating at least \$1,000,000, if there be such a trust company qualified, able and willing to accept the trusts upon reasonable or customary terms.

In case at any time the Individual Trustee shall resign or be removed or otherwise become incapable of acting, a successor to such Individual Trustee may be appointed by the Corporate Trustee by an instrument in writing.

Any new trustee appointed hereunder shall execute, acknowledge and deliver to its or his co-trustee or co-trustees, if any, and to the [fol. 1272] Railway Company, an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates,

properties, rights, powers and trusts of its or his predecessors in the trusts hereunder with like effect as if originally named as trustees herein; but nevertheless on the written request of the Railway Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver any other property and moneys held by such trustee to the successor trustee so appointed in its or his place.

Should any deed, conveyance or instrument in writing from the Railway Company be required by any successor trustee for more fully and certainly vesting in and confirming to such new trustee such estates, rights, powers and duties, then on request any and all such deeds, conveyances and instruments in writing shall be made, executed, acknowledged and delivered by the Railway Company.

Any company into which the Corporate Trustee, or any successor to it in the trusts created by this indenture, may be merged or with which it or any successor to it may be consolidated, or any company resulting from any merger or consolidation to which the Corporate Trustee or any successor to it shall be a party, provided such company shall be a corporation organized under the laws of the State of [fol. 1273] Louisiana or the laws of the State of New York, having a capital and surplus of at least \$1,000,000, and shall do business either in New Orleans, Louisiana, or in the Borough of Manhattan, in the City of New York, shall be the successor to the Corporate Trustee under this indenture without the execution or filing of any paper or any further act on the part of either of the parties hereto, anything herein to the contrary notwithstanding. In case any of the bonds issuable under this indenture shall have been authenticated, but not delivered, any such successor Corporate Trustee may adopt the certificate of authentication of the trust company hereinabove named as one of the parties of the second part, or of any successor to it, as Corporate Trustee hereunder, and deliver the bonds so authenticated; and, in case any of the bonds issuable hereunder shall not have been authenticated, any successor Corporate Trustee may authenticate such bonds in its own name, and in all such cases such authentication shall have the full force and effect which anywhere in said bonds or in this indenture it is provided that the authentication of the Corporate Trustee shall have.

Section 4. The grant in this indenture to the Trustees is subject to the following terms and conditions in respect of the rights and powers of the Corporate Trustee and the Individual Trustee respectively, and every successor trustee and every additional trustee hereunder shall be appointed subject to such terms and conditions, viz:

[fol. 1274] (1) That the bonds secured hereby shall be authenticated and delivered, and all powers conferred upon the Corporate Trustee under this indenture shall be exercised, solely by the trust company named as one of the parties hereto of the second part, or a

trust company constituted and acting as its successor in the trust hereunder;

(2) That the custody of all stocks, bonds and other property and cash held by the Corporate Trustee under this indenture, and all rights, powers and duties with respect to the administration, management and disposition thereof, including the rights, powers and duties vested in the Corporate Trustee under this indenture, shall not vest in the Individual Trustee or his successor, or in any such additional trustee, but shall remain vested solely in the Corporate Trustee or any trust company which may have been constituted and be acting as its successor in the trusts hereunder;

(3) That no powers shall be exercised hereunder by such Individual Trustee or his successor, or any such additional trustee, except jointly with or with the consent in writing of the Corporate Trustee, or any trust company which may have been constituted and be acting as its successor in the trust;

(4) That the Railway Company, and the Corporate Trustee or its successor in the trust, at any time, by an instrument in writing executed by them jointly may remove the Individual Trustee or any other trustee or trustees, and by an instrument in writing executed by them jointly may appoint a successor or successors to such Individual Trustee or any such other trustee;

(5) That in case of the happening of any of the events of default specified in Section 2 of Article Five hereof, the Corporate Trustee or its successor in the trust, by an instrument in writing executed by it without the concurrence of the Railway Company, may remove any such Individual Trustee or any such other trustees and may appoint a successor or successors;

(6) That any notice, request or other writing by or in behalf of the bondholders, delivered solely to the Corporate Trustee or its successor in the trust, shall be deemed delivered to any and all trustees hereunder as effectually as if delivered to each of them;

(7) That until the indebtedness secured by this indenture, or some part thereof, shall become payable under the provisions therein or herein contained, or until under the provisions hereof the Trustees shall become entitled to enter upon the mortgaged premises, any action or exercise of rights or powers or duties of or by the Trustees hereunder, and at any time in any case where power so to do is expressly granted in this indenture, including the power to declare due the principal of the bonds secured hereby, if taken by the Corporate Trustee, or any trust company appointed trustee hereunder as its successor, alone, and without any action on the part of any other trustee, shall be sufficient for the purposes of this indenture; and

[fol. 1276] (8) That any request in writing by the Corporate Trustee, or by any trust company appointed as its successor, to the Individual Trustee hereunder or to his successor, or to any additional trustee, shall be sufficient warrant to such Individual Trustee or his

successor, or any additional trustee, to take such action as may be so requested.

The said Individual Trustee herein named has been joined as trustee in order to comply with statutory requirements which now or hereafter may be in force respecting trustees under deeds of trust of property in localities in which the mortgaged premises or part thereof are or may be situated, and as such trustee shall possess such powers and such powers only as may be necessary to comply with such requirements. In case, by reason of the repeal or removal of such requirements or for any other reason, it shall not be necessary that one of the Trustees shall be a natural person, then on the demand of the Corporate Trustee, or of any corporation appointed as its successor hereunder, the said Individual Trustee, or any successor to him in the trust theretofore appointed, shall resign as such trustee, by writing duly acknowledged for record and delivered to said Corporate Trustee or its successor, and thereupon all powers of said Individual Trustee, or his successor, shall terminate, as shall his or his successor's right, title and interest in and to the mortgaged premises.

[fol. 1277] Every instrument appointing a successor to the Individual Trustee or any additional trustee or trustees shall refer to this indenture, and the conditions in this Article expressed and upon the acceptance in writing by such successor or additional trustee or trustees, he, they or it shall be vested with the estates and property specified in such instrument, either jointly with the Corporate Trustee or its successors, or separately, as may be provided, subject to all the trusts, conditions and covenants of this indenture.

The Individual Trustee herein named, and any of his successors in the trust, and any additional trustee, at any time by an instrument in writing, may constitute the Corporate Trustee and its successors in the trust hereunder, his or its agent and attorney-in-fact, with full authority and power to do all acts and things and exercise all discretions hereunder for and in behalf and in the name of the trustee or trustees executing such instrument.

In case the said Individual Trustee herein named, or any additional trustee, or a successor to either of them, shall die, resign, or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of the Trustees hereunder, so far as permitted by law, shall vest in and be exercised by the Corporate Trustee or its successor in the trust, without the appointment of any trustee or successor to said Individual Trustee, or to such additional trustee; and no successor to said Individual Trustee, or to any additional trustee, shall be appointed unless such appointment shall be necessary or prudent for the protection of the bondholders hereunder, or unless the Corporate Trustee or the holders of a majority in principal amount of the bonds hereby secured shall deem such appointment expedient for any cause.

Section 5. If at any time or times, in order to conform to any law of any locality in which the Railway Company now or at any time hereafter shall hold any property subject to the lien of this indenture, or if the Corporate Trustee shall be advised by counsel

satisfactory to it that it is necessary or prudent in the interest of the bondholders so to do, or if the holders of a majority in principal amount of bonds outstanding under this indenture shall in writing request the Corporate Trustee and the Railway Company so to do, the Trustees and the Railway Company shall unite in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint another trust company or one or more persons approved by the Corporate Trustee, either to act as co-trustee or as co-trustees, for the purpose of this indenture, of all or any of the property subject to this indenture jointly with the Trustees originally named herein or their successors, or to act as separate trustee or trustees of any of such property; and the trust company—and its successors through consolidation, merger or otherwise—or the person or persons so appointed, shall be such co-trustee or [fol. 1279] co-trustees, or separate trustee or separate trustees, with such powers and duties as shall be specified in such instruments and agreements to be executed as aforesaid.

Article Ten

Section 1. Until the happening of one of the events of default enumerated in Section 2 of Article Five of this indenture, the Railway Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the mortgaged premises (other than bonds, certificates of stock, cash and other securities pledged or to be pledged hereunder with the Trustees), and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, earnings, income, issues and profits thereof.

Section 2. If, when the bonds hereby secured shall have become due and payable, the Railway Company shall well and truly pay or cause to be paid the whole amount of the principal moneys and interest due and payable upon all of the said bonds and the coupons for interest thereon, or shall provide for such payment by depositing with the Corporate Trustee hereunder, for the payment of such bonds and coupons, the amount due and payable thereon for principal and interest, and shall also pay or cause to be paid all other sums payable hereunder by the Railway Company, and shall [fol. 1280] well and truly keep and perform all things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed, assigned or pledged shall revert to the Railway Company, its successors or assigns, and the estate, right, title, and interest of the Trustees shall thereupon cease, determine and become void; and the Trustees in such case, on demand of the Railway Company, its successors or assigns, and at its or their cost and expense, shall enter satisfaction of this indenture upon the records, and shall assign and transfer, or cause to be assigned and transferred, and shall deliver or cause to be delivered to the Railway

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Company, all personal property then held by the Trustees or either of them hereunder; otherwise, the same shall be, continue and remain in full force and virtue.

Article Eleven

Section 1. The Railway Company reserves the right to redeem before maturity all of the bonds, as an entirety, at 105 per cent of the principal of the bonds together with the interest then due, the day of redemption being an interest-payment date of such bonds.

In case the Railway Company shall desire to exercise such right to redeem and to pay off all of the bonds on any such interest-payment date, in accordance with the right reserved so to do, [fol. 1281] shall advertise, in one newspaper of general circulation in the City of New Orleans, Louisiana, and one in the Borough of Manhattan, City of New York, at least once in each of the three calendar months next preceding such interest-payment date, the first publication to be at least 90 days prior to the redemption date specified in such notice, a notice that the Railway Company has elected to redeem and pay off all of the bonds on such interest-payment date, and that on such interest-payment date there will become due and payable upon each of the bonds so to be redeemed at the office or agency of the Railway Company, in New Orleans, Louisiana, the principal thereof, with the premium of five per cent as specified in the bonds, together with accrued interest to such interest-payment date. Upon advertisement of such notice by the Railway Company, the bonds so called for redemption shall become due and payable on such interest-payment date specified in such notice, with the premium of five per cent, as specified in the bonds, together with the interest accrued from the last-matured interest installment.

The sum so due for principal and premium of each bond shall be payable to the bearer of such bond, but in no case shall the Railway Company be required to make such payment except upon surrender of such bond and of all unmatured coupons for interest thereon. All coupons for interest which shall have matured on or prior to the date of redemption designated in such notice shall continue to be payable, but without interest thereon, to the respective bearers of such coupons.

[fol. 1282] From and after the date of redemption designated in such notice so advertised (unless the Railway Company shall make default in payment as herein provided upon demand) no further interest shall accrue upon any of the bonds so called for redemption; and anything in such bonds or in such coupons or in the indenture to the contrary notwithstanding, any coupon or claim for interest appertaining to any such bond and maturing after such date shall become and be null and void.

Section 2. On the deposit with the Corporate Trustee of the amount necessary so to redeem all the outstanding bonds issued under this indenture (if they shall have been called for redemption), together with proof to its satisfaction of the giving of such

notice or notices of redemption of all of said bonds, as hereinbefore provided, and on payment to the Trustees of all their costs, charges and expenses in relation thereto, the Trustees shall cancel and satisfy this indenture and assign and deliver to the Railway Company all securities then held by the Trustees or the Corporate Trustee under the provisions hereof. The Corporate Trustee shall apply any moneys so deposited with it to the payment of the bonds issued under this indenture at the rate therein designated with accrued interest to the interest-payment date designated for redemption.

Section 3. All bonds redeemed and paid under this Article shall be cancelled and shall not be reissued.

[fol. 1283]

Article Twelve

Section 1. As used in this indenture, except when otherwise indicated, the words "Corporate Trustee," or any other equivalent term, shall be held and construed to mean Canal-Commercial Trust and Savings Bank, or its successor for the time being in the trusts hereby accepted by the said corporation; and the words "Individual Trustee," or any other equivalent term, shall be held and construed to mean Felix E. Gunter, or his successor for the time being in the trusts hereby accepted by him; and the word "Trustees" or any other equivalent term, shall be held and construed to mean collectively, the parties hereto of the second part and any additional trustee, and their respective successors for the time being in the respective trusts respectively accepted by them; the words "mortgaged premises" shall include property of every kind subject to the lien of this indenture, including stocks, bonds and other securities pledged hereunder and any and all moneys held hereunder as part of the trust estate; the words "bond," "bondholder," shall include the plural as well as the singular number; The word "coupons" refers to the interest coupons attached to the bonds issued hereunder; and the word "person" used with reference to a bondholder shall include associations or corporations owning any of said bonds. Canal-Commercial Trust and Savings Bank and Felix E. Gunter, parties of the second part, hereby accept the trusts in this indenture declared and provided and agree to perform the same upon the terms and conditions herein set forth.

[fol. 1284] For the purpose of facilitating the record hereof, this indenture has been executed in eight counterparts, each of which shall be and shall be taken to be an original, and all collectively but one instrument.

In witness whereof, The Alabama and Vicksburg Railway Company, party hereto of the first part, after due corporate and other proceedings, has caused this indenture to be signed and acknowledged or proved by its President or a Vice President, and by its common seal hereunto to be affixed and to be attested by the signature of its Secretary or an Assistant Secretary; and Canal-Commercial Trust and Savings Bank party hereto of the second part, has caused this indenture

to be signed and acknowledged or proved by its President or one of its Vice Presidents, and its corporate seal to be hereunto affixed and to be attested by the signature of its Cashier or Assistant Cashier, and Felix E. Gunter, party hereto of the second part, has hereunto set his hand and seal.

Executed and delivered the 23rd day of March, 1921.

(Signed) Felix E. Gunter. Attest: (Signed) J. Blanc Monroe, [fol. 1285] roe, W. Brewer. The Alabama and Vicksburg Railway Company, by (Signed) Larz A. Jones, President. Attest: (Signed) Udolpho Wolfe, Secretary. (Seal.) J. Blanc Monroe, W. Brewer. Canal-Commercial Trust and Savings Bank, by (Signed) C. F. Niebergall, Vice President. Attest: (Signed) L. B. Giraud, Cashier.

Witness: (Signed) J. Blanc Monroe, W. Brewer.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a Notary Public, in and for the Parish and State aforesaid, duly commissioned and qualified to take acknowledgments of deeds and other instruments to be used and recorded therein, and also authorized by the law of the State of Mississippi to take acknowledgments to deeds and other instruments to be recorded in that state, personally came and appeared [fol. 1286] Larz A. Jones, President, and Udolpho Wolfe, Secretary, of The Alabama & Vicksburg Railway Company, to me personally known, who signed the foregoing document in my presence and in the presence of the subscribing witnesses, and thereupon being sworn, acknowledged under oath to me, in the presence of the same two undersigned competent witnesses, that they had knowledge of the contents of the foregoing deed of trust or act of mortgage to Canal-Commercial Trust and Savings Bank, and Felix E. Gunter, Trustees, and had signed, sealed and delivered the said instrument as the lawful act and deed of the said The Alabama and Vicksburg Railway Company, and had affixed the common or corporate seal of the said The Alabama & Vicksburg Railway Company to said act on the day and date therein written, and for the uses and purposes therein set forth.

In testimony whereof, I have caused the said appearers and the said witnesses, each in the presence of the others and in my presence, to sign this acknowledgment, together with me, Notary Public, this 23d day of March, 1921.

(Signed) Larz A. Jones, Udolpho Wolfe. Watts K. Leverich,
Notary Public. My commission expires with my death.

Witnesses: (Signed) J. Blanc Monroe, W. Brewer.

[fol. 1287] STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a Notary Public within and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified to take acknowledgments of deeds and other instruments to be used and recorded therein, and also authorized by the law of the State of Mississippi to take acknowledgments to deeds and other instruments to be recorded in that State, personally came and appeared Felix E. Gunter, to me personally known and known to be the person whose signature is affixed to the foregoing document, who being duly sworn, acknowledged under oath, in my presence and in the presence of the undersigned competent witnesses, that he had knowledge of the contents of the above and foregoing deed of trust or act of mortgage from The Alabama and Vicksburg Railway Company, and had signed, sealed and accepted the said instrument by his own free will and accord and for the uses and purposes therein set forth.

In witness whereof, I have caused the said appearer and the said witnesses, each in the presence of the others, and in my presence, to sign this acknowledgment, together with me, Notary Public, this 23rd day of March, 1921.

(Signed Felix E. Gunter. Watts K. Leverich, Notary Public. My commission expires with my death.

[fol. 1288] Witnesses: (Signed) J. Blanc Monroe, W. Brewer.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a Notary Public in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified to take acknowledgments of deeds and other instruments to be used and recorded therein, and also authorized by the law of the State of Mississippi to take acknowledgments to deeds and other instruments to be recorded in that State, personally came and appeared C. F. Niebergall, Vice President, and L. B. Giraud, Cashier, of Canal Commercial Trust and Savings Bank, to me personally known, who signed the foregoing document in my presence and in the presence of the subscribing witnesses, and who thereupon being sworn, acknowledged to me under oath, in the presence of the undersigned competent witnesses, that they had knowledge of the contents of the foregoing deed of trust or act of mortgage from The Alabama and Vicksburg Railway Company, and that on behalf of the Canal Commercial Trust and Savings Bank they had signed, sealed and accepted the said instrument and had affixed the common or corporate seal of the said Canal Commercial Trust and Savings Bank to said act on the day and date therein written, and for the uses and purposes therein set forth.

In testimony whereof, I have caused the said appearers and the said witnesses, each in the presence of the others and in my presence, to sign this document, together with me, Notary Public, this 23rd day of March, 1921.

(Signed) C. H. Niebergall, L. B. Giraud. Watts K. Levenrich, Notary Public. My commission expires with my death.

Witnesses: (Signed) J. Blanc Monroe, W. Brewer.

STATE OF MISSISSIPPI,

Lauderdale County:

I, Geo. F. Hand, Clerk of the Chancery Court of said County, do hereby certify that the within-named instrument was filed for record in my office on the 28th day of March, 1921, at 4 o'clock P. M., and that the same, together with the certificate and acknowledgment is [fol. 1290] is now duly recorded in D/T Book 137, page 286, of the records in my office.

Given under my hand and official seal, this the 30th day of March, 1921;

(Signed) Geo. F. Hand, Clerk. (Seal.)

STATE OF MISSISSIPPI,

County of Scott:

I, the undersigned, B. R. Nichols, Clerk of the Chancery Court of Scott County, State of Mississippi, do hereby certify that the within and foregoing instrument was filed in my office for record on the 30th day of March, 1921, at 9 o'clock A. M., and that the same, together with the certificate of acknowledgment, is now duly recorded in Land Deed of Trust Book No. 55, at pages 499 et seq., of the records of deeds of trust in my said office.

Given under my hand and official seal this 1st day of April, 1921.

(Signed) B. R. Nichols, Chancery Clerk. (Seal.)

STATE OF MISSISSIPPI,

County of Newton:

I, the undersigned, C. M. Wells, Clerk of the Chancery Court of Newton County, State of Mississippi, do hereby certify that the [fol. 1291] within and foregoing instrument was filed in my office for record on the 29th day of March, 1921, at 9 o'clock A. M., and that the same, together with the certificate of acknowledgment is now duly recorded in Land Deed of Trust Book No. 12, at pages 521, et seq., of the records of deeds of trust in my said office.

Given under my hand and official seal, this 31st day of March, 1921.

(Signed) C. M. Wells, Chancery Clerk, by M. B. Potter, D. C. (Seal.)

STATE OF MISSISSIPPI,
County of Rankin:

I, the undersigned, S. D. Donnell, Clerk of the Chancery Court of Rankin County, State of Mississippi, do hereby certify that the within and foregoing instrument was filed in my office for record on the 28th day of March, 1921, at 10 o'clock A. M., and that the same, together with the certificate of acknowledgment, is now duly recorded in Land Deed of Trust Book No. 6, at pages 209, et seq., of the records of deeds of trust in my said office.

[fol. 1292] Given under my hand and official seal, this 28th day of March, 1921.)

(Signed) S. D. Donnell, Chancery Clerk. (Seal.)

STATE OF MISSISSIPPI,
County of Hinds:

I, W. S. Wells, Clerk of the Chancery Court of Hinds County, Mississippi, do hereby certify that the above and foregoing instrument of writing was filed in my office for record on the 24th day of March, 1921, at 11:05 A. M., and that the same, together with the certificates of acknowledgment, is now duly recorded in the record of land deeds in said County, wherein mortgages are recorded, that is to say, in Book No. 128, at pages 468, et seq., of the records of deeds and mortgages in my office, in the First District of said County, at Jackson.

Given under my hand and official seal this 31st day of March, 1921.

(Signed) W. S. Wells, Clerk of the Chancery Court of Hinds County, by E. D. Roberts, Deputy Clerk. (Seal.)

[fol. 1293] STATE OF MISSISSIPPI,
County of Hinds:

I, W. S. Wells, Clerk of the Chancery Court of Hinds County, Mississippi, do hereby certify that the above and foregoing instrument of writing was filed in my office for record on the 5th day of April, 1921, at 8 A. M. and that the same, together with the certificates of acknowledgment, is now duly recorded in the record of land deeds in said County and the Second District thereof, wherein mortgages are recorded, and that is to say, in Book No. 11, at pages 98, et seq., of the record of deeds and mortgages in my office in the Second District of said County, at Raymond, Mississippi. This the 21st day of April, 1921.

(Signed) W. S. Wells, Clerk of the Chancery Court of Hinds County, by C. S. Spann, Deputy Clerk. (Seal.)

STATE OF MISSISSIPPI,
Warren County:

I, J. D. Laughlin, Clerk of the Chancery Court of said County, hereby certify that the foregoing instrument of writing, with the

certificate of acknowledgment, was filed in my office for record on the 24th day of March, 1921, at 5 o'clock P. M., and duly recorded in Trust Deed Book No. 149, page 1.

Witness my hand and seal of said Court, this 26th day of March, 1921.

(Signed) J. D. Laughlin, Clerk. (Seal.)

Endorsed: Received and filed April 19, 1924. W. J. Buck, Clerk.
W. J. Brown, D. C.

[fol. 1294] IN SUPREME COURT OF MISSISSIPPI

THE ALABAMA & VICKSBURG RAILWAY COMPANY et al., Complainants and Appellants,

vs.

JACKSON AND EASTERN RAILWAY COMPANY, Defendant and Appellee

ASSIGNMENT OF ERRORS—Filed April 28, 1924

The Appellants, The Alabama & Vicksburg Railway Company et al., show to this court that there are divers errors to its prejudice apparent of record in this cause. Of said errors appellants assign the following, the most flagrant of them, as causes for the reversal of the erroneous and unjust decree rendered against them by the Chancery Court of Lauderdale County from which the appeal in this case is prosecuted, to-wit:

1. The Court below erred in denying the complainants, now appellants, relief, in dissolving the injunction heretofore issued in their favor in said cause and in dismissing their bill of complaint.

2. The Court below erred, as shown by the face of its final decree in this: It adjudged and found facts which required that the eminent domain suit, the prosecution of which was enjoined temporarily in this case, should have been perpetually enjoined; the court below wholly dissolved the injunction.

3. Other causes to be made known on the hearing.

Wherefore, the appellants pray a reversal of the unjust and erroneous final decree of the Chancery Court and for the rendition by this court of a final decree granting the appellants, complainants in [fol. 1295] the court below, the relief prayed for by them in their bill of complaint.

And as in duty bound, complainants will ever pray, April 26, 1924.

S. L. McLaurin, Bozeman & Cameron, J. Blanc Monroe, and
R. H. & J. H. Thompson, Solicitors for Appellants.

Jackson, Mississippi, April 26, 1924.

A copy of the above and foregoing assignment of errors has this day been forwarded, by mail, postage prepaid, to Messrs. Neville & Stone, solicitors for the Appellee, directed to them at Meridian, Mississippi, their place of residence and usual post-office address.

R. H. Thompson, Solicitor for Appellants.

[File endorsement omitted.]

[fol. 1296] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

CROSS-ASSIGNMENT OF ERRORS—Filed May 30, 1924

And now comes the Jackson & Eastern Ry. Company, appellee in the above cause and shows unto your Honors that there are manifest errors in the decree rendered by the Chancery Court of Lauderdale County, Mississippi, in said cause on February 15, 1924, to the prejudice of appellee, as follows, to-wit:

1. The Court below erred in incorporating in its said decree the following:

"It is the opinion of the Court that the Eminent Domain Proceedings instituted by the defendant against the complainant seek to condemn greater rights in the property of the Alabama & Vicksburg Ry. Company than a mere easement for the purpose of making its junction."

2. The Court below erred in its said decree in its finding that the appellee in its condemnation proceedings sought "to acquire a dominant right of ownership in the property of the complainant."

3. The lower court erred in its said decree in reciting in said decree that the application filed by appellee in said condemnation proceedings should be amended.

Wherefore appellee prays for a reversal of said decree to the extent of the above mentioned erroneous findings and holdings.

And as in duty bound, appellee will ever pray.

Green, Green & Potter, J. R. East, Neville & Stone, Solicitors
for Appellee.

[fol. 1297] We do hereby certify that we have this day mailed a copy of the attached cross assignment of errors to each of Messrs. R. H. & J. H. Thompson of Jackson, Miss., and Boeman & Cameron

of Meridian, Miss., and S. L. McLaurin of Brandon, Miss., and J. Blane Monroe of New Orleans, La., solicitors of record for appellants

This the 29th day of May 1924.

Green, Green & Potter, J. R. East, Neville & Stone, Solicitors
for Appellee.

[File endorsement omitted.]

[fol. 1298] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

AMENDED ASSIGNMENT OF ERRORS—Filed May 1, 1924

The Appellants, The Alabama & Vicksburg Railway Company, et al., show to the court that there are divers errors to its prejudice apparent of record in this cause. Of said errors appellants assign the following, the most flagrant of them as causes for the reversal of the erroneous and unjust decree rendered against them by the Chancery Court of Lauderdale County from which the appeal in this case prosecuted, to-wit:

1. The court below erred in denying the complainants, now appellants, relief, in dissolving the injunction heretofore issued in the favor in said cause, and in dismissing their bill of complaint.

2. The court below erred, as shown by the face of its final decree in this: It adjudged and found facts which required that the eminent domain suit, the prosecution of which was enjoined temporarily in this case, should have been perpetually enjoined; the court below wholly dissolved the injunction.

3. The court below erred in deciding that the constitution and laws of the State of Mississippi gave the appellee, Jackson & Eastern Railway Company, a right to a junction with the railway line of the appellant company because the subject matter of a junction of two interstate railroads is governed exclusively and alone by the constitution and laws of the United States which give no such right; the subject matter of this suit being one of Interstate Commerce and the law [fol. 1299] and constitution of the State of Mississippi, if construed as they were by the court below are in conflict with the Interstate Commerce Act of Congress and the amendments thereto and are violative of the Fourteenth Amendment to the Constitution of the United States and of the provision of the National Constitution giving Congress exclusive right to regulate Interstate Commerce.

4. It being an admitted fact in this case that the Jackson & Eastern Railway Company had when this suit was begun and now has no constructed railroad within fifty miles of the place it seeks

effectuate a junction with appellant's railway track, the court below erred in decreeing that said junction could rightfully be enforced.

5. The decree of the court below is erroneous because the laws of the State of Mississippi, whether constitution or statutory, have no application to the junction of two interstate railroads, and the granting of any supposed rights under the laws of the state is violative of the Commerce clause of the Constitution of the United States, of the fourteenth amendment of that constitution, of the Interstate Commerce Act and the amendments thereto and each separately considered.

Other causes to be made known on the hearing.

Wherefore, the appellant prays a reversal of the unjust and erroneous final decree of the Chancery Court and for the rendition by this court of a final decree granting the appellants, complainants in the court below, the relief prayed for by them in their bill of complaint.

And as in duty bound, complainants will ever pray. May 2, 1924.
Bozeman & Cameron, S. L. McLaurin, J. Blanc Monroe, and
R. H. & J. H. Thompson, Solicitors for Appellants.

[fol. 1300] Copy forwarded by mail, postage prepaid, May 2, 1924 to Messrs. Stone & Neville, Solicitors for appellee, at Meridian, Mississippi, their place of residence and post office address.

R. H. Thompson.

[File endorsement omitted.]

[fol. 1301] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

AMENDED AND CONSOLIDATED ASSIGNMENT OF ERRORS—Filed
August 25, 1924

The Appellants, the Alabama & Vicksburg Railway Company et al., show to the court that there are divers errors to its and their prejudice apparent of record in this cause. Of said errors appellants assign the following, the most flagrant of them, as causes for the reversal of the erroneous and unjust decree rendered against them by the Chancery Court of Lauderdale County from which the appeal in this case is prosecuted, to-wit:

1. The Court below erred in denying the complainants, now appellants, relief; in dissolving the injunction heretofore issued in their favor in this cause and in dismissing their bill of complaint.

2. The Court below erred in this: If found as a fact, shown by its final decree, that the eminent domain proceedings, instituted by

the defendant, Jackson & Eastern Railway Company, against the complainants, now appellants, seek to condemn greater rights in the property of The Alabama & Vicksburg Railway Company than it has a mere easement for the purpose of making its junction. This is a correct finding, but the court below nevertheless refused to perpetuate the injunction restraining said proceedings and by dissolving the injunction adjudicated that the Jackson & Eastern Railway Company had the right to condemn for its purposes the owners' occupancy and use a part of the main track, its rails, cross-ties and other fixtures of The Alabama & Vicksburg Railway Company and to deprive the last named Company of its possession and use. [fol. 1302] decree appealed from therefore deprives the Alabama & Vicksburg Railway Company and its co-appellants of property without due process of law and of the equal protection of the law, and besides, impaired the obligations of its charter contract with the state in contravention of the Constitution of the United States, especially the XIV amendment thereto, its Commerce Clause, Art. 1, Sec. 8, par. 3, and its clause Art. 1, Sec. 10, par. 1, forbidding impairment of the obligations of contracts. The court below therefore found that the defendant's application in its Eminent Domain proceeding was too broad and should be amended, but nevertheless wholly dissolved the injunction.

3. The court below erred in deciding that the constitution and laws of the State of Mississippi gave the appellee, Jackson & Eastern Railway Company, a right to a junction with the railway line of the appellant company because the subject matter of a junction of two interstate railroads is governed exclusively and alone by the constitution and laws of the United States; the subject matter of this suit being one of Interstate Commerce and the laws and Constitution of the State of Mississippi, if construed as they were by the court below, are in conflict with the Interstate Commerce Act, Congress and the amendments thereto and are violative of the XIV Amendment to the Constitution of the United States and of the provision of the National Constitution, Art. 1, Sec. 8, p. 3, giving Congress exclusive right to regulate Interstate Commerce.

4. It being an admitted fact in this case that the Jackson & Eastern Railway Company had when this suit was begun and now has no constructed railroad within many, in fact fifty miles of the place it seeks to effectuate a junction with appellant's railway track, the court below in decreeing that said junction could rightfully be forced.

5. The decree of the court below is erroneous because laws of the State of Mississippi, whether constitutional or statutory, have no [fol. 1303] application to the junction of two interstate railroads and the granting of any supposed rights under the laws of the state is violative of the commerce clause, Art. 1, Sec. 8, p. 3, of the Constitution of the United States, of the XIV Amendment of that constitution, of the Interstate Commerce Act and the amendments thereto and of each separately considered.

6. The court below erred in permitting the Jackson & Eastern Railway Company, an interstate carrier, to continue its proceedings to condemn for its railroad purposes and for its private purposes, the property of The Alabama & Vicksburg Railway Company, actually in use for railroad purposes by the last named company, also an interstate carrier, and in failing to adjudge that any constitutional or statutory provisions of the state permitting or authorizing such proceedings, especially Constitution of 1890, Sections 184 and 190, if and when so construed, are null, void and violative of the Constitution of the United States, especially the XIV Amendment thereto, its Commerce clause, Art. 1, Sec. 8, p. 3. and its clause, Art. 1, Sec. 10, p. 1, forbidding the impairment of the obligations of a contract.

7. The court below erred in permitting the Jackson & Eastern Railway Company to continue its proceedings to condemn the "ownership, occupancy and use," of a section or part of The Alabama & Vicksburg Railway Company's main line of track for a junction at a dangerous place; one upon a curve, upon a fill, between two four hundred foot trestles, near a public highway crossing and within the flood area of Pearl River. Said point was not selected with reasonable care looking to the welfare of each of the two roads and of the public, but was selected by the Jackson & Eastern Railroad Company for ulterior and selfish purposes.

8. The Court below erred in failing to perpetually enjoin the Jackson & Eastern Railway Company from proceeding in its eminent [fol. 1304] domain suit to condemn a junction with the track of The Alabama & Vicksburg Railway Company at an improper and unduly dangerous place, selected arbitrarily by defendant without submission to or approval by any supervisory body or tribunal.

9. The court below erred in holding that the Jackson & Eastern Railway Company had a right to build its railroad to Curan's Crossing, its charter requiring its road to be built or extended from Sebastopol, Mississippi, to Jackson, Mississippi, and its authority to extend its railroad, granted by the Interstate Commerce Commission, required its road to be built to Jackson and not to Curan's Crossing, the point where it seeks to end its track and to enforce a junction with the complainants' tracks. The courts should not aid a corporation in the violations of its character duties to the state or in the circumvention of the requirements of the Interstate Commerce Commission. Any party injuriously affected may complain of such conduct.

Other causes to be made known on the hearing.

Wherefore, the appellant prays a reversal of the injunct- and erroneous final decree of the Chancery Court and for the rendition by this court of a final decree granting the appellants, complainants in the court below, the relief prayed for by them in their bill of complaint.

And as in duty bound, complainants will ever pray. August 22, 1924.

A. S. Bozeman, S. L. McLaurin, J. Blanc Monroe, and R. H. Thompson, Solicitors for Appellants.

A copy of the above and foregoing amended and consolidated assignment of errors has this day been forwarded by mail postage prepaid to Messrs. Neville & Stone, solicitors for the appellee, addressed to them at Meridian, Mississippi, their place of residence and usual post office address. Another copy of the same has been likewise forwarded to Messrs. Green & Green, also solicitors for the appellee, addressed to them at Jackson, Mississippi, their place of residence and usual post-office address. Done August 25, 1924.

R. H. Thompson, Solicitor for Appellant.

[File endorsement omitted.]

[fol. 1305] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ARGUMENT AND SUBMISSION—September 8, 1924

Argued orally by R. H. Thompson and J. B. Monroe for Appellant and Hardy Stone and Marcellus Green for appellee and submitted on briefs by S. L. McLaurin, J. B. Monroe, and R. H. & J. H. Thompson and Bozeman & Cameron for Appellant and Neville & Stone and Green & Green for Appellee.

[fol. 1306] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

JUDGMENT—Filed November 3, 1924

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Lauderdale County and this court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 15th day of February, 1924, be and the same is hereby affirmed on the direct appeal of the Alabama & Vicksburg Railway Company and in the cross appeal. It is further ordered and adjudged and decreed that The Jackson & Eastern Railway Co. have and recover of the Alabama & Vicksburg Railway Co. its costs in this court and in the court below in this behalf expended to be taxed for which execution may issue, and further, as the amount of damages sustained by the appellee recoverable on the supersedeas bond

executed herein by appellant and Canal Commercial Trust & Savings Bank of New Orleans and Felix E. Gunter principals and the United States Fidelity & Guaranty Co. as surety, dated February 15th, 1924, approved March 10, 1924, and on the supersedeas bond executed herein by appellant principal and United States Fidelity & Guaranty Co. surety dated and approved June 6th, 1922, is not shown by the record. It is ordered that this cause be remanded to the Chancery Court for ascertainment and decree of such damages as may be recoverable on said bonds in addition to the costs of appellee in this court and in the court below, to be taxed, and it is further ordered that this cause be remanded to the said Chancery Court for ascertainment and decree for such damages on the injunction bond herein dated and approved March 21st, 1922, with appellant and Canal-Commercial Trust & Savings Co. of New Orleans and Felix E. Gunter [fol. 1307] as principals and United States Fidelity & Guaranty Co. as surety as may properly be recoverable on said bond and against the Alabama & Vicksburg Railway Co. for such damages as may be properly recoverable by action upon suggestion of damages filed or that may be filed in said Chancery Court upon remand.

[fol. 1308] IN SUPREME COURT OF MISSISSIPPI

In Banc

[Title omitted]

OPINION—Filed November 3, 1924

HOLDEN, J.:

The case is here for the second time, it having been considered and decided by Division B of this Court in April, 1923, reported in 131 Miss. 857, 95 So. 733, wherein this court reversed the judgment of the lower court and remanded the cause for a further hearing by the Chancellor on the question of the fact as to whether or not the proposed connection between the railroads could be reasonably made. For a full statement of the facts and the law of the case reference is now made to the former decision of this court.

The suit is one to enjoin the Jackson & Eastern Railway Company from exercising the right of eminent domain to condemn an easement over the right of way of the Alabama & Vicksburg Railway for connection purposes at Currins Crossing in Pearl River Valley (or swamp) near the eastern suburbs of the City of Jackson and immediately east of Pearl River.

The Jackson & Eastern Railway Company sought the connection with the Alabama & Vicksburg Railway Company under the right given it by Section 184, State Constitution of 1890, and Section 4096, Code of 1906, Hemingway's Code, Section 6725, which provide in substance that every railroad company shall have the right to intersect and connect with any other railroad at any point on their routes,

[fol. 1309] and that eminent domain may be exercised for this purpose.

The application for the condemnation of an easement for connection purposes by the appellee, Jackson & Eastern Railway Company, was enjoined upon several grounds, and on a hearing to dissolve, the demurrer of the defendant to the injunction was sustained, and an appeal was taken to this court, which resulted in a reversal and the cause was sent back for a hearing upon one question only, which we shall deal with more fully and specifically later on. Therefore the law of the case was settled by the former decisions, and nothing is left on the present appeal except to follow the law as announced and ascertain the correctness of the decree of the lower court under it, on the appeal now before us.

All of the questions of law now presented were involved in the former appeal and were passed upon by the court adversely to the appellant, except one point upon which it reversed the decree and remanded the cause for further hearing on the question of fact with reference to the reasonableness of the proposed connection.

The bill alleged "that the place where the condemnation is sought to be made for the connection is improper and unsafe and dangerous for a point of junction of two railroads." That the connection would be dangerous to the public and to the employees and to the two railroads on account of the connection being in the swamp on a trestle where the Pearl River overflows occasionally, and that the connection sought would have to be made by intersecting at a reverse curve in the main track of the appellant, Alabama & Vicksburg railroad. And many other reasons are urged as showing that the connection at Currins Crossing would be unreasonable, unduly dangerous, and detrimental to the general public, and to the railroads and the railroad employees.

On the former appeal this Court in reversing the decree of the Chancellor sustaining the demurrer to the bill, held that the Chancellor was in error in his view that the connection sought might be made at any point and under any circumstances; and the Court said:

"However, we think the Chancellor was in error in sustaining a demurrer to the bill for injunction. The right to make a physical connection by one railroad with that of another must be reasonably exercised. In other words, the point of junction must be selected with due care with reference to the interest and welfare of both railroads, and with reasonable consideration for the safety and other rights of the general public, as well as of the two railroad companies."

Upon a remand of the case the Chancellor proceeded to hear testimony at great length for both sides to determine the question, as directed by the opinion, as to whether or not the proposed connection at the point selected was reasonable with reference to the interest and welfare of both railroads, "and was with reasonable consideration for the safety and other rights of the general public, as well as the two railroad companies;" and whether the connection sought was awarded to Messrs. Green & Green, also solicitors for the appellee, and

[fol. 1311] terest of the other railroad company, considered with reference to the feasibility of the proper junction at a more reasonable point, having due regard to the circumstances, the interest of the two railroads, and that of the general public."

Many witnesses testified for the appellant, the Alabama & Vicksburg Railway Company, and their testimony went to establish the fact that the proposed connection would be unreasonable, improper, unduly dangerous to all concerned, and detrimental to both railroads, their employees, and to the general public; and that a more reasonable connection could be made at a point a short distance further east on the main line of the appellant, Alabama & Vicksburg Railway Company. Nothing would be gained by setting out in detail the testimony offered by the appellant on the question of fact presented, but it is sufficient to say that it was strong proof against the reasonableness and safety of the connection at the proposed point.

The appellee, the Jackson & Eastern Railroad Company, offered many witnesses who testified positively that the proposed connection was reasonably safe, proper and not unduly dangerous, and would not be injurious to the railroads, the employees nor the general public interest. These witnesses, if believed, established the fact by their testimony that the proposed connection was reasonable and entirely proper. Their testimony appears to be clear and positive on the subject.

The Chancellor also personally visited the scene of the proposed connection, and examined the physical conditions and observed the circumstances and general situation there. This information received by the Chancellor, as trier of fact, we assume was of considerable value as an aid to him in determining the truth from the conflicting testimony of the witnesses on the opposite sides of the case; and the Chancellor found the fact to be that the connection sought was reasonable and proper, and dissolved the injunction, from which decree the Alabama & Vicksburg Railway Company now appeals; and appellee cross appeals.

Under the law of the case all that was left to be tried by the lower court on the new trial was the question of fact as to the reasonableness, and so forth, of the proposed connection; therefore the point for our decision on the present appeal is whether or not the finding of fact by the Chancellor is manifestly wrong and should be reversed.

We have examined the testimony offered by the opposing parties and after a careful and lengthy consideration of it we are convinced that the finding by the Chancellor was amply supported by the proof, and we see no reason for a reversal of the finding of fact on the question directed by the former opinion to be inquired into by the lower court.

It is ably urged by the appellant that a more reasonable and better connection could be made at other points on its line, or that the appellee should construct its road across Pearl River in to Jackson and connect in that way with the appellant railroad. But we disagree with this contention for the reason that under the law, and as said by this court on the former appeal, "We think it certainly could not be that any railroad company can alone select a place of junction,

regardless of circumstances or conditions. It has the right to inter-[fol. 1313] sect such railroad or cross it whenever the conditions are such that it may do so without endangering unduly the public safety or the rights or interests of the other railroad company, considered with reference to the feasibility of the proper junction at a more reasonable point, having due regard to the circumstances, the interests of the two railroads, and that of the general public." Therefore it follows that the railroad seeking the connection may exercise the right to connect at any point on the other railroad so long as the proposed junction is reasonably safe and proper. And the Chancellor having decided that question of fact in favor of the proposed connection, the contention of the appellant in this regard is without merit.

Another question presented now which was also in the former appeal, though not discussed in that opinion, is that the injunction should have been sustained because the application for the condemnation of the right of way of the appellant sought to condemn the ownership or fee in the strip of land of appellant's main line for the proposed connection purposes, whereas the law permits only the condemnation of an easement for a connection.

We have examined and considered the language used in the application for the condemnation, and while the words "own, occupy and use said strip of land, rights, privileges and easements above described" would seem to indicate that it was an attempt to condemn the ownership in the strip of land to be used for connecting purposes instead of the condemnation of an easement thereof, yet we think that, taking the application as a whole, the language should be construed to mean that only an easement is sought to be condemned.

[fol. 1314] Under the law an easement is all that could be secured by the condemnation proceedings; and we think that was all that was intended to be condemned, and the judgment of condemnation must necessarily be limited to the acquirement only of an easement for the proposed connection. Therefore we hold that the application when properly construed seeks on an easement which the appellee, Jackson & Eastern Railway Company, is entitled to under the law.

The other questions in the case which deserve notice were passed upon in the former decision, and we shall not undertake to again revise them. It is argued by counsel for the appellant that the President and owner of the Jackson & Eastern Railway Company, Mr. Neville, candidly states that he expects to connect with the Alabama & Vicksburg Railway at the point proposed and to endeavor to secure the use of the Alabama & Vicksburg Railway Company's track and bridge to cross over into the City of Jackson instead of building his own bridge across the river, and that he intends to construct his railroad terminal at the point of connection in the Pearl River swamp, and that he would be financially unable to build into Jackson by bridging Pearl River and expects to avoid doing so by obtaining, at some time in the future, the right to use the Alabama & Vicksburg track into the City of Jackson. It is contended, as we understand it, that these future intentions, desires and purposes of the Jackson & Eastern Railroad go to establish the fact that the

proposed connection is unreasonable, and that the Jackson & Eastern Railway Company should be compelled to build its own line into Jackson and that the question of financial ability, as decided by some of the courts, is not to be considered as a good reason for [fol. 1315] not building its own line across the river into the City of Jackson, and that the connection in that way is the reasonable and proper one instead of at Currins Crossing.

But we do not think the argument is sound because the connecting railroad has the right under the law to make its connection at whatever point on the other railroad that it desires, and it is not for the other railroad to dictate the point of connection, provided that such connection is reasonable and safe, &c. Therefore, the appellee has the right to connect at Currins Crossing instead of being compelled to run its line to another point for connection. What Mr. Neville contemplates doing in the distant future with reference to his connections and facilities to get into Jackson is not here involved.

The decree of the lower court is affirmed, on direct and cross appeal.
Affirmed.

Anderson, J. dissents.

[File endorsement omitted.]

[fol. 1316] IN SUPREME COURT OF MISSISSIPPI

In Banc

[Title omitted]

DISSENTING OPINION—Filed November 3, 1924

ANDERSON, J.:

I am unable to agree with the majority of the court in this case. When the case was before this court on the other appeal the court declared as part of the law of the case that the junction between the two railroads had to be made with regard to the interests of both railroads as well as the public interests, and also with reference to its reasonableness and feasibility. (A. & V. Ry. Co. v. J. & E. Ry. Co., 131 Miss. 857, 95 So. 733.)

As I view the uncontradicted evidence in this case only one reasonable conclusion can be drawn therefrom, and that is the proposed junction between these two railroads is not reasonable nor feasible and is against the public interest as well as the just interests of the railroads.

In considering whether the proposed junction ought to be made it should be compared to any other junction or junctions which the evidence shows might be made. And if there appears to be another junction that could be made which would be more feasible and much more to the public interest and to the interests of the two railroad

companies, then surely the proposed junction would come under the condemnation of the law of this case as laid down on the former appeal.

[fol. 1317] The evidence shows without conflict that the proposed junction at Curran's Crossing will be a longitudinal connection thereby increasing the danger to employees of the roads, that it will be in Pearl River bottom which is about five miles wide and subject to one or more overflows annually which cover the swamp from the foothills on one side to the foothills on the other, that said junction will be on a ten foot fill and at a point near a much frequented public road crossing and at a point between two railroad trestles of the Alabama & Vicksburg Railway Company, each about 400 feet long.

The evidence given by Mr. Neville, the President of the Jackson & Eastern Railway Company, shows that although his Company has a permit from the Interstate Commerce Commission to build its line of road in a westerly direction "to the *the* city of Jackson," his Company has no purpose of building further than this junction with the Alabama & Vicksburg Railway Company, that it has no purpose whatever of going into the City of Jackson over its own bridge and tracks. But the hope of his Company is that sooner or later, by some sort of arrangement with the Alabama & Vicksburg Railway Company, that his Company will get into Jackson and there connect with the other railroad lines coming into Jackson, and this was the main purpose of his Company in making Jackson the western terminus of its line of railroad. Mr. Neville admitted in his evidence in effect that if his Company were able financially to go into the City of Jackson over its own tracks and bridges across Pearl River and there connect with the other lines of railroad entering the city of Jackson, the public interest as well as the interests of the two railroads would [fol. 1318] better served. He frankly admitted that instead of doing that Curran's Crossing was selected by his Company as a junction as a matter of economy to his Company.

The law is, as I understand it, that in considering the public interest as well as that of the two railroads the matter of economy will not control. The predominant consideration will be the feasibility of the junction in connection with the public welfare and the interests of the two railroads. Economy as a consideration must stand aside for these things. As I understand the courts which have passed on like questions have so held. Elliott on Railroads, 3d ed., Sections 1130 and 1225; In re Pennsylvania Railroad's Appeal, 93 Pa. St. 159. This junction at Curran's Crossing under the evidence will be the western terminus of the Jackson & Eastern Railway Company's line. There is no pretense to the contrary. The evidence shows what a railroad terminal is, but none was necessary because the court judicially knows what it is. A railroad terminal at Curran's Crossing would mean switch tracks, storage tracks, and a freight house. In other words railroad yards in Pearl River bottom on a ten foot hill in a few hundred yards of the City of Jackson where entering connection could be made with the various railroad lines entering said city. The thing just looks to me next to impossible. I do not know how otherwise to characterize it.

The bill of the Alabama & Vicksburg Railway Company ought to have been sustained in my judgment on another ground, and that is that the eminent domain application of the Jackson & Eastern Railway Company failed to sufficiently describe the right or easement it sought to condemn. It is unquestioned that the Jackson & Eastern Railway Company has no right under the statute to condemn the fee [fol. 1319] in the tracks and right of way of the Alabama & Vicksburg Railway Company for the junction. Where a lesser interest than the fee in land is sought to be appropriated in a condemnation proceeding the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest which is to be taken, and also with such certainty as to enable the jury to intelligently and according to law assess the compensation to be paid for the interest taken. *Pontiac Improvement Co. v. Board of Commissioners*, 135 N. E. (Ohio), 635, 23 A. L. R. 866. Certainly the proceedings ought to be definite enough as to description of the right sought to be taken as that the owner of the fee will know how much he will have left after the proposed easement is taken. This is also necessary to enable the taxing authorities to properly assess the property. Unless what is taken by the condemnation proceedings is made definite how could the taxing authorities determine what assessment value to put on what was taken and what was left?

[File endorsement omitted.]

[fol. 1320] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR—Filed December 1, 1924

If the Court please:

In this case we most respectfully suggest that the Court erred, prejudicially to the appellant Alabama & Vicksburg Railway Company, in the opinion of the majority of the Court delivered, and in the final decree rendered, November 3, 1924, in the following particulars:

I

First. The Court should have re-considered the federal questions presented by the record of the cause, and decided when this case was before it on a former appeal. These federal questions were presented by the record not only on the former appeal but were distinctly presented thereby on the second appeal, upon which the opinion was delivered and decree rendered of which this suggestion of error is predicated. The former opinion of this Court in this case is reported. *Alabama & Vicksburg Railway vs. Jackson & Eastern Railway Company*, 131 Miss., 857, s. c. 95 So. 733.

This Court upon the appeal, the last one, under consideration, we say with due respect, treated the federal questions presented, as if foreclosed from further consideration by the decision previously made in the cause, as if the doctrine known as *as the "Law of the Case,"* had application. Said doctrine, it is submitted, had no application since this Court, so far as concerns federal questions, is an intermediate and not a final appellate court. This Court has so decided. *Cole's Estate v. Receiver First State Bank of Pittsboro*, 119 Miss. 789, s. c. 81 So. 237.

Both railroads, parties to this suit, are admittedly engaged in Interstate Commerce, and subject to the Interstate Commerce Commission.

The federal questions presented in this case are:

(a) Has, as we insist, the Interstate Commerce Commission exclusive jurisdiction to order the physical connection, the junction, of two railroads, each of them being engaged in Interstate Commerce and subject to the jurisdiction of the Interstate Commerce Commission and bound by its orders, judgments and decrees?

(b) Did not the Interstate Commerce Commission acquire exclusive jurisdiction of the subject matter of the junction sought to be enforced by the Jackson & Eastern Railway Company with the tracks of The Alabama & Vicksburg Railway Company, when the Jackson & Eastern Railway Company filed its petition with the Interstate Commerce Commission to enforce said junction, said petition having been pending when this suit was begun before the Commission; and when the Eminent Domain suit was begun?

(c) Does not the judgment of this Court in this case authorizing the Jackson & Eastern Railway Company to condemn a junction with the tracks of The Alabama & Vicksburg Railway Company, under the admitted and undisputed facts of the case, and the averments and prayer of the application in the Eminent Domain Suit, deprive The Alabama & Vicksburg Railway Company of its property, without due process of law and deny it the equal protection of the law in violation of the fourteenth amendment of the Constitution of the United States, and divest its vested rights and impair [fol. 1322] the obligations of its contract with the State, in violation of the contract clause, Art. 1, Sec. 10, of the Constitution of the United States?

(d) Is it unlawful, contrary to the laws of the United States, for a railroad Company to build an extension to its road, without the permission of the Interstate Commerce Commission? This record shows that the Jackson & Eastern Railway Company recognized so doing to be unlawful. It applied to the Interstate Commerce Commission for permission to extend its road, then in existence from Union in Newton County to Sebastopol in Scott County, from Sebastopol to Jackson in Hinds County. This permission was grudgingly granted by the Commission; granted upon condition and not absolutely. With such permission the Jackson & Eastern Railway Company now proposes and this Court has, we submit er-

roneously approved its proposal not to build its road to Jackson in Hinds County but to build it from Sebastopol in Scott County to Curan's Crossing in Rankin County. We have heretofore cited the only court decision, the only authority known to us upon the subject to the effect that the Alabama & Vicksburg Railway Company is, under the circumstances, entitled to enjoin the proposed junction with its track. This question the court silently decided against our client, thereby holding that a violation of a law of the United States invests the Jackson & Eastern Railway Company with a right to the junction sought by it. This holding by the Court, we think, should be re-considered.

This is not all, the decision made by this Court seems to us, we say it with due respect, gives sanction to an escape by the Jackson & Eastern Company from its charter obligation to build its railroad to Jackson in Hinds County. To build to a point in Rankin County will not be to build to Jackson.

The first of these federal questions above enumerated as (a) is fully discussed in our original printed brief, beginning at page 203 [fol. 1323] thereof; the law of the case is discussed on p. 213 of the brief; the federal statute involved is therein cited and quoted and besides we have cited therein several decisions made by respectable courts, made since the first appeal in this case was decided, holding that the Interstate Commerce Commission was exclusive jurisdiction of the matter of junctions between two interstate railroads. This Court passed the subject in silence and thereby decided (we submit erroneously) this fundamental federal question against our client. We respectfully pray its reconsideration and a careful re-reading of our brief on the subject.

The Interstate Commerce Act, as amended by the Transportation Act of 1920, changed the prior law by conferring additional authority upon the Interstate Commerce Commission. Please read and consider paragraphs 3 and 4 of the act quoted in our original brief pages 213 and 214. Please carefully examine the decision of the Supreme Court of Ohio rendered December 4, 1923 in the case of *Lake Erie A. & W. R. Co. v. Public Utilities Commission*, 141 N. E. 847, and *People of State of New York ex rel. New York Central R. Co. v. Public Service Commission*, 233 N. Y. 113; s. c. 135 N. E. 195. See also 178 Wis. at page 152; s. c. 189 N. W., and the other cases cited in our original printed brief pp. 217, 218 and 219.

The federal question above designated as (b) arises from the fact, as shown of record, that the Jackson & Eastern Railway Company has filed with the Interstate Commerce Commission a petition praying that tribunal for an order enforcing a junction, the very same one sought by the Eminent Domain Suit enjoined in this case. That petition was yet pending when the Eminent Domain Suit was begun; the Interstate Commerce Commission has never passed definitely on the question involved.

We feel sure that under the facts of this case the Interstate Commerce Commission has exclusive jurisdiction of the question whether the Jackson & Eastern Railway Company is entitled

to enforce a junction with the track of the Alabama & Vicksburg Railway Company.

The federal question designated above as (c) was fully presented in our original printed brief beginning on page 223 thereof, and, we think, the Court should have decided otherwise than by mere silence, the question thus presented. This Court apparently decided it against our client as being unworthy of mention.

The federal question designated above as (d) was presented in our original printed brief, beginning at p. —, and yet the Court decided it against our client by saying nothing on the subject in the majority and controlling opinion. The only authority pertinent thereto is not only cited in our original printed brief, but was again called to the attention of the Court on a typewritten addendum to the brief pasted in the back of the several copies of the printed brief filed and made a part of the record. To come to Jackson over a line of railroad belonging to another company is not to build a railroad into Jackson. The Jackson & Eastern Company is under a charter duty to build its railroad "through Rankin County and into Jackson, Hinds County." It now proposes, and this court has silently approved the proposal, to violate this obligation and to build its road, not "through Rankin County" into Jackson, but to Curran's Crossing in Rankin County, and stop at that, imposing burdens on another railway company, or client. It should not be encouraged to do so, but should be required to perform its obligations to the State, and build its road not otherwise than as permitted by the Interstate Commerce Commission.

[fol. 1325]

II

This Court has erred, as we submit most respectfully, in holding that the Jackson & Eastern Railway Company was entitled to enforce a junction with the tracks of the Alabama & Vicksburg Railway Company when, and because, the Jackson & Eastern Company had and has no line of constructed railroad track within fifty miles, as shown by the evidence, of the proposed place of junction. This question was brought into the case by an amendment of the bill made after the decision of this case on the first appeal; the amendment averred that the Jackson & Eastern Railway Company had no railroad or railroad track within twelve miles, probably not within thirty miles, of the proposed place of junction. The amendment was never denied or controverted in any way although the defendant appeared thereto, moving to strike it out, its motion being denied, and the undisputed proof showed that at the time of the trial the Jackson & Eastern Company had no railroad or railroad track within fifty miles of the place proposed for a junction.

Under the laws of this State and the United States a junction between two railroads can be made only between two existing railroad tracks. In fact this Court so decided upon the first appeal in this case, and its decision then made should have been treated as the law of the case. See the 2'd paragraph of the syllabus to the case, as reported 95 So. Rep. 733; the syllabus having been written by

this Court was and is as much a part of its judicial determination as it would have been had it been incorporated in any other part of its opinion. This Court there affirmed as a condition of one railroad having a right to enforce a junction with another railroad that the two railroads must "be near and contiguous to each other," and yet when the two railroad companies, parties to this suit, were undisputedly shown not to be within less than fifty miles of each other, [fol. 1326] the Court, in disregard of its previous utterances on the subject, adjudicated exactly contrary to its previous announcement of the law on the subject. This question is discussed in our original printed brief, beginning at page 47, and we respectfully ask the Court to re-read the same and apply the argument there made to this feature of the case. Private property can be taken for public use but not for a private use. The right of way of a railway company, whatever may be said of its nature, cannot be taken for a private use; such property is not placed on a lower plane than private property. The building of a railroad is not a public use; a railroad is of use to the public only after it has been constructed and is ready to engage in business as a carrier, condemn an ordinary right of way, because the ownership of a right of way is a condition precedent to the construction of its track; but the existence of a railroad track is a condition precedent to the company's right to a junction with the tracks of another railroad company. This question, too, was silently and by implication decided against our client. We respectfully pray its re-consideration by the Court, and we point out that permitting the taking of complainant's property by defendant for private use will be a taking of complainant's property without due process of law and a denial to it of the equal protection of the law, in contravention of the fourteenth amendment of the Constitution of the United States.

III

The Eminent Domain Application or Petition Too Broad

It is further respectfully suggested that this Court erred in holding that the application or petition in the Eminent Domain proceeding was not too broad. If that case be tried before a special Eminent Domain Court, the judgment will necessarily follow the language of the application in describing the property, the interest [fol. 1327] therein *con*-condemned. The Alabama & Vicksburg Railway Company is placed by the decision of this Court we are considering at the mercy of the Jackson & Eastern Railway Company. The applicant and plaintiff in the Eminent Domain proceeding, we submit, should at least have been enjoined not to take or obtain in the Eminent Domain Court a judgment granting greater rights than this Court decided it to be entitled to recover. This Court, if its judgment under consideration shall become final, will have no further power or jurisdiction in the premises and cannot protect our client from whatever judgment the Jackson & Eastern Railway Company shall see proper to take in the Eminent Domain suit.

We do not see how the judgment prescribed to be entered by the Eminent Domain Court can be varied from the statutory form prescribed for it; and if that form be complied with, it seems to us, the judgment will invest the Jackson & Eastern Railway Company with a fee simple title to the land and property sought to be condemned, a part of appellant's right of way and main track, and exclude the Alabama and Vicksburg Railway Company from its possession and use. Our client ought not to be placed at the mercy of its opponent. This is an Equity suit, and a court of Chancery is empowered to and should so frame its decrees as to protect the rights of every party in interest. Any decree in favor of the Jackson & Eastern Company that may be rendered in this case should be so framed as not to empower that company to wrong its adversary our client. If there be a doubt on the subject the decree should remove the same.

This Court also, we submit, erred in holding that the point raised upon the application in the Eminent Domain suit, that it was too broad, demanding a condemnation of appellant's property its right of way and main railway track in fee, was determined in this case on [fol. 1328] the first appeal and in applying the "Law of the Case" doctrine to the question. The Court apparently failed to note that on the first appeal this case came before it for review of a decree of the court below sustaining a demurrer to the bill of complaint. This Court reversed that decree, holding the bill of complaint not to be demurrable. It is true that the appellant on the first appeal urged as a ground for reversal of the decree sustaining the demurrer to the bill that the application in the Eminent Domain suit was too broad and sought to condemn the land in fee, but this Court in overruling the appellee's demurrer did not discuss that proposition in its opinion. Had this Court on the first appeal affirmed the decree from which it was prosecuted, there might be reason for contending that the appellant's contention touching the extended scope of the application or petition in the Eminent Domain suit was foreclosed: but this court did not affirm, it reversed the decree of the Chancery Court then under review. To overrule a demurrer because of one feature of the bill of complaint to which it is directed is not to sustain it because, or in respect to, another feature of the bill. On the first appeal this Court decided the bill of complaint not to be subject to demurrer, pointing out in its opinion one feature of the bill as a reason why the demurrer should have been overruled. It said nothing touching another feature of the bill, the one now under consideration. So doing was no more a condemnation of the latter feature than it was an approval of it. The decision of this Court on the first appeal left the point we are now discussing undecided.

The judgment of the Court on the first appeal, overruling the demurrer to the bill of complaint, can more reasonably be said to have sustained than to have disapproved the points appellant then made and now makes upon the scope and extent of the application or [fol. 1329] petition in the Eminent Domain suit. This is especially true, because this Court on the first appeal adjudicated that the Jackson & Eastern Railway Company was not entitled to condemn the

land in fee, but under any and all circumstances then shown of record, had no greater or other right than to acquire an easement therein.

Judge Anderson in his dissenting opinion announced the law correctly when he stated that if less than a fee simple title is to be condemned in an Eminent Domain proceeding the application or petition therein should specifically and accurately designate and describe the lesser interest sought to be taken, citing the only case on the subject we have been able to find in the books. *Pontiac Improvement Co. v. Board of Commissioners, etc.* (Ohio) 135 N. E. 635, s. c. 23 Ann. Law Reports, 866.

We earnestly request a re-consideration of the subject herein last treated.

IV

The Danger of the Place Where the Junction is Sought

We are conscious that our feelings on the subject of the dangers of the place where the junction is sought to be effected will have to be guarded in discussing this feature of the case; we, however, trust to present our views rationally and fairly.

The witnesses for defendant who expressed opinions to the effect that the proposed point of junction was not improper and unduly dangerous, put emphasis upon the word "unduly" used by this Court in its opinion in this case on the first appeal; each of them admitted that there were five separate elements of danger encountered at that place. These witnesses were not engineers of eminence, if they can be said to have been engineers at all. They had [fol. 1330] no practical knowledge of Pearl River or its dangers; they failed to investigate and inform themselves on the subject. The inquiry touching the dangers of the proposed point of junction involved a disapproval of their previous work in fixing upon the point of junction, and the less efficient a man is in his profession the more hostile he is to adverse criticisms of his professional performances. But the greatest weakness in their testimony, aside from their want of actual practical knowledge of the proposed place of junction, is this: Each of them admitted that the place was objectionable and dangerous for a junction between two railroad tracks, pointing out five separate facts making it so, five separate elements of danger admittedly not present at the other proposal point of connection, and yet they claimed it was not unduly dangerous. To base the judgment of a court upon such testimony, even if it were uncontradicted, is to base the same upon the shadowy conception that there is a difference between unnecessarily dangerous and unduly dangerous places for a railroad junction; an unexplained and inexplainable difference. The witnesses did not tell, nor could mortal man tell, exactly when an unnecessarily dangerous place ceases to be unduly dangerous. This Court cannot ascertain from the testimony of defendant's witnesses, or of either of them, the difference between an unnecessarily dangerous and unduly danger-

ous. The witnesses for complainant, each of them, who testified that the proposed place of junction was an highly and unduly dangerous place for a junction, were engineers of greater learning, experience and efficiency than were defendant's witnesses, and besides, a matter of moment, several of complainant's witnesses had actual knowledge of Pearl River and of the place in question, and all of them were most positive that Curan's *that* Curan's crossing was an eminently and extremely dangerous place for a junction of two railroad tracks.

[fol. 1331] We apprehend the majority of this Court gave the fact that the Chancellor viewed the premises too much weight. The fact is, we submit, his having viewed the premises was not entitled to be given any weight at all. Chancellor Tann, like ninety and nine out of one hundred of all judges, had no experience either as a civil engineer or as practical railroad operative. The dangers of Curan's Crossing as a junction point between two railroad tracks is not apparent upon a view of the premises by the eyes of the inexperienced man; for such a view to be of aid in determining dangers the observer must be either a practical railroad man, well informed touching the operation of trains, or an expert civil engineer versed in railroading. The Chancellor saw nothing when he viewed the locus in quo except conditions admitted to exist by the pleadings and proofs, and his views cannot be held to have contradicted any admitted or uncontradicted facts in the case.

There are many things of which the ordinary man can gain no information by a view of them. If Chancellor Tann had viewed two wires, strung between poles, one of them extremely dangerous because charged with a very high voltage of electricity and the other uncharged or so slightly charged as to be harmless, he would not have been able to tell the one highly dangerous from the harmless one. The operation alone of many things determines whether they be dangerous or harmless. The conditions surrounding and going to make up the existence of a railroad junction point determine its character as being improper and dangerous, or proper and safe. Experience in railroad operations and a knowledge of all the facts are essential to enable any person to decide the question from a view of the premises. The complainant's witnesses had that experience and knowledge; defendant's witnesses had neither.

The great preponderance of the evidence, we feel sure, shows the proposed place of junction to be an improper and exceedingly [fol. 1332] dangerous place for the junction of two railroad tracks. The complainant's witnesses, men of experience and knowledge on the subject, unhesitatingly and without reservation affirm that the proposed junction, if effected, will be a "death trap."

We have admitted that our feelings are enlisted on this subject; they are enlisted to but a limited extent, if at all, because of the pecuniary interest of our client, either present or prospective, but are seriously enlisted because we cannot view the question under discussion otherwise than as involving human life. The professional responsibility of lawyers is frequently a serious matter, but when it may involve the life of a fellow man it is doubly serious. If the

proposed junction shall be effected and one human life shall be extinguished by reason of the unusual dangers incident to it, we shall fear that something done or omitted by us in the prosecution of this suit may have indirectly caused or contributed to the death of a fellow man.

We have discussed the dangers of the proposed junction point in our original printed brief, beginning at page 59 and extending to page 157, and we earnestly urge the Court to reread the pages of the brief mentioned.

The Chancellor's finding of fact touching the dangers of the proposed place of junction was so far unsupported, the great weight of evidence being against it, that this Court ought to reverse it and perpetuate the injunction heretofore granted and issued in this cause.

The question should be considered as involving the safety of human life and all doubts should be resolved in its favor; that one of the judges of this Court is clearly of the opinion that the proposed place of junction is a dangerous one, dangerous to human life is significant.

November, 1924.

[fol. 1333] Respectfully submitted, J. Blanc Monroe, Albert S. Bozeman, Sidney L. McLaurin, and Robert H. Thompson,
Solicitors for Appellant.

[File endorsement omitted.]

[fols. 1334 & 1335] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—December 15, 1924

This cause coming on to be heard on the suggestion of error filed herein and this court having sufficiently considered the same, doth order and adjudge that said suggestion of error be and the same is hereby overruled.

[fol. 1336] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed December 16, 1924

To the Honorable Sydney Smith, Chief Justice of the Supreme Court of Mississippi:

The Alabama & Vicksburg Railway Company, the Canal-Commercial Trust & Savings Bank, Felix E. Gunter, and the United

States Fidelity & Guaranty Company petitioners, present this their petition for a writ of error to the Supreme Court of the United States in the above entitled cause, and respectfully show that on the 2nd day of April, 1923, the Supreme Court of the State of Mississippi rendered a judgment in this proceeding, not finally disposing of the case, but reversing and remanding it to the Chancery Court of Lauderdale County, Mississippi, which opinion and decree are reported in 131 Miss. 857, S. C. 95 Southern Reporter, 733. That thereafter further proceedings were had in said Chancery Court of Lauderdale County, Mississippi, and judgment having been rendered in said court, same was by petitioners again appealed to the Supreme Court of Mississippi, where said cause was argued and a decision handed down on the 3rd day of November, 1924. That thereafter, in due course, a suggestion of errors was filed by appellants, which suggestion of errors was denied by the Supreme Court of Mississippi on the 15th day of December, 1924, thereby making the judgment of November 3, 1924, when taken in connection with the judgment of April 2, 1923, the final judgment in this case. That said judgments thus made final had the effect of dissolving and dismissing a bill for injunction brought by petitioners against the Jackson & Eastern Railway Company, whereby it was sought to enjoin the said Jackson & Eastern Railway Company from further proceeding with a condemnation application which the Jackson & Eastern Railway [fol. 1337] Company had filed with the Circuit Court of Rankin County, Mississippi, to condemn certain rights in and to the main line track, embankment and right-of-way land of the Alabama & Vicksburg Railway Company near Jackson, Miss., the Alabama & Vicksburg Railway Company contending that the Jackson & Eastern Railway Company thereby sought to acquire the right to own, occupy and use, to its exclusion and detriment, a section of the main line track of the Alabama & Vicksburg Railway Company, thus destroying the continuity of the Alabama & Vicksburg Railway Company's track, in violation of the rights of the Alabama & Vicksburg Railway Company under the Constitution and laws of the United States and the Constitution and laws of the State of Mississippi; the Alabama & Vicksburg Railway Company contending that the Mississippi Constitution and laws, particularly Sections 184 and 190 of the Mississippi Constitution of 1890, and Sections 1854 to 1877, inclusive, of the Mississippi Code of 1906, did not permit such a procedure under the circumstances existing, and further contending that if said Constitution and laws did permit such a procedure, they, and particularly the sections stated, were in violation of the rights of the Alabama & Vicksburg Railway Company under the Contract Clause, to-wit: Article 1, Section 10, § 1, and the Interstate Commerce Clause, to-wit: Article I, Section 8, § 3, of the Federal Constitution, and under the Fourteenth Amendment to that Constitution, and under the Interstate Commerce Act and Transportation Act of 1920, all of which will appear by reference to the record and proceedings in said cause, the same being numbered 22,820 and 24,292 in the Supreme Court of the State of Mississippi, which last mentioned court is the highest

court of the State of Mississippi in which a decision in this suit, or any other, can be had.

And your petitioners aver that in their original bill or declaration, and or in its assignment of errors in the Supreme Court of Mississippi, it was expressly charged that the following statutes of the State of Mississippi, especially, to-wit: Mississippi Code Chapter on Eminent Domain, Sections 1854 to 1877, inclusive, and Constitution of Mississippi, Sections 184 and 190, if construed to permit the Jackson & Eastern Railway Company to proceed with said condemnation proceeding, were unconstitutional and deprived your petitioners of their property without due process of law and contravened the Fourteenth Amendment of the Constitution of the United States, and regulated and imposed a burden upon interstate commerce in violation of the Interstate Commerce Clause of the Federal Constitution, to-wit: Article I, Section 8, §3, the Federal Interstate Commerce Act and the Federal Transportation Act of 1920, which give Congress [fol. 1338] exclusive right to regulate interstate commerce; and also impaired the contract rights of the Alabama & Vicksburg Railway Company in violation of the Contract Clause of the Federal Constitution, to-wit: Article I, Section 10, §1.

That said claims of infringement and impairment of petitioners' rights under the Federal Constitution and of the unconstitutionality of the statutes in question were made and pressed during the trial of said cause in the Chancery Court and in the Supreme Court of Mississippi, but that notwithstanding these contentions by pleading, by assignment of errors and argument, the Supreme Court of Mississippi, being the highest court of that State, decided against the title, right, privilege and immunity thus specially set up and claimed by petitioners, and decided in favor of the right of the Jackson & Eastern Railway Company to condemn said property, and decided in favor of the constitutionality of the State statutes above enumerated.

And petitioners show that the said judgment and decision and interpretation of the said statutes of the State of Mississippi and the statutes themselves as thus interpreted and construed by the court of last resort of Mississippi, are in conflict with and repugnant to the Constitution and laws of the United States, particularly the Fourteenth Amendment, the Contract and Interstate Commerce Clauses of the Constitution, the Interstate Commerce Act and the Transportation Act of 1920.

And your petitioners further aver that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioners, all of which will more fully appear from the assignment of errors which is filed herein.

Wherefore, your petitioners pray that a writ from the Supreme Court of the United States may issue in this cause to the Supreme Court of the State of Mississippi, returnable as provided by law, for the correction of errors so complained of, and that a transcript of record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of Mississippi, may be sent to the

Supreme Court of the United States, as provided by law; and petitioners pray for citation and that an order of supersedeas may be entered herein pending the final disposition of this cause, and that the amount of security may be fixed by the order allowing the writ of error.

And as in duty bound petitioners will every pray.

Alabama & Vicksburg Railway Company, Canal Commercial and Savings Bank, Felix E. Gunter, and United States Fidelity and Guaranty Company, Petitioners. J. Blanc Monroe, of New Orleans, La., and Robert H. Thompson, of Jackson, Mississippi, Their Attorneys.

[File endorsement omitted.]

[fol. 1339]

[File endorsement omitted]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed December 16, 1924

And now come The Alabama & Vicksburg Railway Company, The Canal-Commercial Trust & Savings Bank, of New Orleans, Felix E. Gunter and The United States Fidelity & Guaranty Company, petitioners and plaintiffs in error by undersigned counsel, and in connection with the petition for a writ of error to the Supreme Court of the United States show that in the record and the proceedings, and in the rendering of the judgments and decisions of the Supreme Court of the State of Mississippi in the above entitled and numbered cause, which bears the Numbers 24,292 and 22,820 of the Supreme Court of the State of Mississippi, manifest error has intervened to the prejudice of petitioners and plaintiffs in error in this, to-wit:

First. The Court erred in failing to hold that under the provisions of the United States Constitution, particularly Article 1, Section 8, §3, and under the Federal Interstate Commerce Act as amended by the Federal Transportation Act of 1920, approved February 28, 1920, exclusive jurisdiction to determine all controversies between railroads engaged in interstate commerce, as to the necessity vel non and the proper location of and the other questions arising in connection with the physical connection between them, is vested in the Interstate Commerce Commission.

Second. The Court erred in holding that the Mississippi Constitution and statutes, particularly Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive, of the Mississippi Code of 1906, and Sections [fol. 1340] 184 and 190 of the Mississippi Constitution of 1890, grant to one interstate carrier, the Jackson & Eastern Railway Company the power by a proceeding filed with the Circuit Court Clerk to con-

demn a junction with another interstate carrier, The Alabama & Vicksburg Railway Company, at a point selected by the first interstate carrier, over the objection and protest of the second carrier and without approval of, or consultation with the Interstate Commerce Commission; and in failing to hold that the State Constitution and statutes so construed, were and are illegal, null and void, as in contravention of the provisions of the United States Constitution and statutes, particularly Article 1, Section 8, §3 of the Federal Constitution, and the Federal Interstate Commerce Act as amended by the Federal Transportation Act of 1920, approved February 28, 1920.

Third. The Court erred in holding that under the provisions of the Mississippi law, particularly Sections 184 and 190 of the Constitution of Mississippi, and Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive, of the Mississippi Code of 1906, one interstate carrier has the right to proceed with a condemnation suit in which it avers that it seeks to "own, occupy and use" a section of the main line track and embankment of another interstate carrier, and has the right to condemn and acquire the ownership described in the petition, of the main line track of the second carrier, and in failing to hold that these Sections of the Constitution and Code of Mississippi, and each of them, as thus construed, are illegal, null and void as in contravention of the Commerce Clause, Article 1, Section 8, §3; the Contract Clause, Article 1, Section 10, §1, and the Fourteenth Amendment to the Constitution of the United States, and each of them, and that, as thus construed, they regulate and burden interstate commerce, impair the obligations of the defendant carrier's charter contract with the State of Mississippi, it being a Mississippi corporation, and denies to the defendant carrier, the equal protection of the laws and due process of law.

Fourth. The Court erred in holding that the Jackson & Eastern Railway Company, an interstate carrier, could, under the laws of the State of Mississippi, particularly Sections 184 and 190 of the Constitution of 1890, and Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive, of the Mississippi Code of 1906, proceed to condemn property of The Alabama & Vicksburg Railway Company, an interstate carrier, in a Mississippi State Court, by a petition which was construed by the Chancellor, who heard the case and by an Associate Justice of the Supreme Court of the State of Mississippi, as claiming to condemn and acquire to the plaintiff, Jackson & Eastern Railway Company, a greater right in the indispensable main line track and right of way of The Alabama & Vicksburg Railway Company, than a mere easement for the purpose of making a junction, and in failing to hold that the said Mississippi Laws as thus construed, were illegal, null and void, as in contravention of the Constitution of the United States, particularly the Commerce Clause, Article 1, Section 8, §3, the Contract Clause, Article 1, Section 10, §1, and the Fourteenth Amendment.

Fifth. The Court erred when after holding in this very case, 95 Southern, 733, and in the Vinegar Bend case, 89 Miss. 84, s. c., 43

Southern, 292, that in a Mississippi condemnation proceeding "the only question that could be decided * * * was the amount of the damages; that the court could not decide the right of the plaintiff in such proceedings to institute proceedings, nor could any other question be raised than that of the amount of the damages," it refused to enjoin defendant from proceeding with such a condemnation suit on a petition in which it describes specifically a section of defendant's main line track and embankment (an artery of interstate commerce), and averred that it was necessary for the condemnor to "own, occupy and use said strip of land", but permitted said suit to continue on the authority of the Mississippi Constitution, Sections 184 and 190, and the Mississippi Code of 1906, Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive, since said Mississippi laws so construed were and are illegal, null and void as in contravention of (a) the Commerce Clause, Article 1, Section 8, §3; (b) the Contract Clause, Article 1, Section 10, §1; and (c) the Fourteenth Amendment of the Constitution of the United States, in that they either permit one interstate carrier to own, occupy and use the main line track and embankment of another interstate carrier and deprive the latter carrier of the continuing and previously acquired similar use of said property; or else they permit a condemnation of property in a proceeding in which the defendant can raise no issue, save the issue of the amount of damages, under so ambiguous an allegation as to the extent of the interest to be taken, as to deny the defendant carrier the contract rights granted to it by the State in its charter, and the due process and equal protection of the law guaranteed it by the Fourteenth Amendment. The ambiguity of the pleading is strikingly illustrated by the inability of the Mississippi Judges themselves to agree as to what condemnor was seeking to acquire.

Sixth. The Court erred in construing defendant's condemnation proceeding as seeking from applicant nothing but an easement for a connection, and in failing to enjoin the condemnation proceeding, since the construction thus placed on the condemnation petition was patently erroneous, and moreover, formed no part of the condemnation proceeding, and unless the condemnation proceeding were enjoined and the plaintiff therein forced to amend its pleading so as to [fol. 1342] unambiguously adopt the court's construction of said pleading, the condemnor would under the Mississippi statutes, particularly the Code of 1906, Section 1867 be entitled "to enter upon and take possession of said property and appropriate it to public use as prayed for in the application" without regard to the construction placed upon said petition by the Supreme Court in another proceeding, the defendant land owner being meanwhile powerless to raise any issue, save the issue of the amount of damages; and these Mississippi statutes, to-wit: Sections 184 and 190 of the Constitution of 1890, and Sections 1854 to 1877, inclusive, and 4093 to 4099 inclusive, as thus construed, are and should have been held by the Supreme Court of Mississippi to be illegal, null and void as in contravention of the Constitution of the United States, particularly Article 1, Section 8, §3, Article 1, Section 10, §1 and the Fourteenth Amendment.

Seventh. The Court erred in holding that one interstate carrier under the provisions of the Mississippi Constitution, Section 184 and Section 190, and Mississippi Code of 1906, Sections 1854 to 1877 inclusive, and 4093 to 4099, inclusive, can condemn for a similar use land owned and already in use by another interstate carrier incorporated under the laws of Mississippi, and in failing to hold that said statutes so construed are illegal, null and void as in contravention of the Constitution of the United States, particularly Article 1, Section 8, §3, Article 1, Section 10, §1, and the Fourteenth Amendment.

Eighth. The Court erred, when it appeared that the Jackson & Eastern Railway Company had itself first made application to the Interstate Commerce Commission for authority to make a junction with the Alabama & Vicksburg Railway Company, in holding that under the Mississippi Constitution of 1890, Sections 184 and 190, and Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive of the Mississippi Code of 1906, the Jackson & Eastern Railway Company had the right to condemn by a proceeding in the State Court a section of the main line track of the Alabama & Vicksburg Railway Company, either for a junction, or in full ownership, and in failing to hold that said statutes so construed were illegal, null and void and in contravention of the Constitution of the United States, particularly Article 1, Section 8, §3, the Commerce Clause, and Article 1, Section 10, §1, the Contract Clause, and the Fourteenth Amendment.

Ninth. The Court erred in failing to hold that the proposed point [fol. 1343] of junction of the two railroads was a dangerous one, and in failing to hold that there was a point in the near neighborhood where a connection of the two roads might have made without danger or difficulty; and under these circumstances, the court erred in holding that the condemnation proceeding could continue under the authority of Section 184 and Section 190 of the Mississippi Constitution, and Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive, of the Code of 1906; and in failing to hold that these statutes thus construed were illegal, null and void as in contravention of the Constitution of the United States, particularly the Commerce Clause, Article 1, Section 8, §3, the Contract Clause, Article 1, Section 10, §1, and the Fourteenth Amendment.

Tenth. It appearing that the charter of the Jackson & Eastern Railway Company and also the certificate of public necessity issued to the Jackson & Eastern Railway Company by the Interstate Commerce Commission required it to build its line from Sebastopol to Jackson, the court erred in failing to hold that the following laws of the State of Mississippi, to-wit: Section 184 and 190 of the Constitution, and Sections 1854 to 1877, inclusive, and 4093, to 4099, inclusive, of the Mississippi Code of 1906, which were construed as authorizing the Jackson & Eastern Railway Company to build its line from Sebastopol, Mississippi, to Curran's Crossing, Mississippi, were as thus construed, illegal, null and void as in contravention of the Constitution of the United States, particularly the Commerce Clause, Article 1, Section 8, §3, the Contract Clause, Article 1, Section 10, §1 and the Fourteenth Amendment.

Eleventh. The Court erred in holding that under the Constitution and statutes of Mississippi, particularly Sections 184 and 190 of the Constitution of 1890, and Sections 1854 to 1877, inclusive, and 4093 to 4099, inclusive, of the Code of 1906, an interstate carrier can by a proceeding in the Mississippi State Court condemn either a junction with, or a property ownership in the right-of-way and track of another interstate carrier, when the nearest track of the condemnor is over forty miles from the property sought to be condemned, and in failing to hold that the said State laws thus construed are illegal, null and void as in contravention of the Constitution of the United States, particularly Article 1, Section 8, §3; Article 1, Section 10, §1, and the Fourteenth Amendment, and in contravention of the Federal Interstate Commerce Act as amended by the Federal Transportation Act of 1920.

J. Blanc Monroe, of New Orleans, Louisiana, and Robert H. Thompson, of Jackson, Mississippi, Attorneys for Plaintiffs in Error.

[fol. 1344] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed December 16, 1924

On reading of the above petition for writ of error and the assignment of errors, and upon due consideration of the record in said cause,

It is ordered that a writ of error with supersedeas, be allowed from the Supreme Court of the United States to the Supreme Court of the State of Mississippi as prayed for in said petition, and that said writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States, in accordance with law, upon condition that the said petitioners and plaintiffs in error, The Alabama and Vicksburg Railway Company, Canal-Commercial Trust & Savings Bank, Felix E. Gunter and the United States Fidelity & Guaranty Company give security in the sum of — Dollars, that the said plaintiffs in error shall prosecute the said writ of error to effect, and if plaintiffs in error fail to make good their plea, shall answer to the defendant in error for all costs and damages that may be adjudged or decreed on account of said writ of error.

The said plaintiffs in error now present a bond in the sum of Five thousand Dollars, with ———, as surety.

It is ordered that the said bond be and the same is hereby duly approved.

In witness whereof, I have hereunto set my hand this 16th day of December, 1924.

Sydney Smith, Chief Justice of the Supreme Court of Mississippi.

[File endorsement omitted.]

[fol. 1345] BOND ON WRIT OF ERROR FOR \$5,000—Approved and filed December 16, 1924; omitted in printing

[fol. 1346] IN SUPREME COURT OF MISSISSIPPI

WRIT OF ERROR—Filed December 16, 1924

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Mississippi, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of Mississippi before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Alabama and Vicksburg Railway Company, Canal Commercial Trust & Savings Bank, Felix E. Gunter and the United States Fidelity & Guaranty Company, and the Jackson and Eastern Railway Company, wherein was drawn in question the validity of a treaty or Statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a Statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein any title, right, privilege or immunity was claimed under the Constitution, or any treaty or Statute of or Commission held or authority exercised under the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, Statute, commission or authority, a manifest error hath happened to the great damage of the said The Alabama & Vicksburg Railway Company, Canal Commercial Trust & Savings Bank, Felix E. Gunter and the United States Fidelity & Guaranty Company, as by the complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date thereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the [fol. 1347] United States the 16th day of December, in the year of our Lord One Thousand Nine Hundred and Twenty Four.

Jack Thompson, Clerk of the United States District Court for the Southern District of Mississippi. (Seal U. S. District Court Southern District of Mississippi.)

Allowed, to operate as a supersedeas, by Sydney Smith, Chief Justice of the Supreme Court of Mississippi.

[File endorsement omitted.]

[fol. 1348] CITATION—In usual form, showing service on Samuel Neville; filed December 20, 1924; omitted in printing

[fol. 1349] IN SUPREME COURT OF MISSISSIPPI

CLERK'S CERTIFICATE

I, W. J. Buck, clerk of the Supreme Court of the State of Mississippi, being the Court of said State which has highest, last and final jurisdiction of all pleas and causes pending in the courts of said State, do hereby certify that the foregoing are full, true and correct copies of all the papers (except maps and blue prints) all of them constituting the record in the said Supreme Court of the State of Mississippi in the case of Alabama & Vicksburg Railway Company vs. Jackson & Eastern Railway Co., No. 24,292 on the docket of said court, all of which are now on file in my office, and taken together constitute the record in said cause.

Given under my hand with the seal of said Court affixed at offices in the City of Jackson, Mississippi, this the Sixth day of January, A. D., 1925.

W. J. Buck, Clerk of the Supreme Court of Mississippi. (Seal of Supreme Court State of Mississippi.)

Cost of transcript, \$533.50, paid by appellant in error.

W. J. Buck, Clerk.

[fol. 1350] [File endorsement omitted.]

Endorsement on cover: File No. 30,804. Mississippi Supreme Court. Term No. 839. The Alabama & Vicksburg Railway Company, Canal Commercial Trust & Savings Bank, Felix E. Gunter, et al., plaintiffs in error, vs. Jackson & Eastern Railway Company. Filed January 13th, 1925. File No. 30,804.

POSTPONED TO MERITS

MAY 4 - 1925

No. ~~244~~ 244

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FEB 27 1925

W. H. STANES

IN THE
United States Supreme Court

OCTOBER TERM ~~1924~~ 1925

ALABAMA & VICKSBURG RAILWAY COMPANY,
ET ALS.,

Petitioners,

versus

JACKSON & EASTERN RAILWAY COMPANY.

NOTICE, MOTION AND PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT OF
THE STATE OF MISSISSIPPI.

ALABAMA & VICKSBURG RAILWAY COMPANY,
ET ALS., PETITIONERS.

R. H. THOMPSON,
A. S. BOZEMAN,
S. L. McLAURIN,
MONTE M. LEMANN,
J. BLANC MONROE,
Counsel for Petitioners.

March, 1925.

UNITED STATES FIDELITY & GUARANTY COMPANY.

By R. H. THOMPSON,

A. S. BOZEMAN,

S. L. McLAURIN,

MONTÉ M. LEMANN,

J. BLANC MONROE,

Counsel for Petitioners.

The foregoing notice and delivery of a copy thereof and of the motion and petition for writ of *certiorari* and brief in support thereof are hereby acknowledged this 22nd day of February, 1925.

NEVILLE & STONE,

GEO. B. NEVILLE,

Attorneys for J. & E. Ry. Co.

IN THE
United States Supreme Court

OCTOBER TERM 1924

ALABAMA & VICKSBURG RAILWAY COMPANY,
ET ALS.,
Petitioners,
versus
JACKSON & EASTERN RAILWAY COMPANY.

MOTION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF
MISSISSIPPI.

ALABAMA & VICKSBURG RAILWAY COMPANY,
ET ALS.,
Petitioners.

Now come The Alabama & Vicksburg Railway Company, the Canal-Commercial Trust & Savings Bank of New Orleans, Felix E. Gunter, and the United States Fidelity and Guaranty Company, petitioners, by their Counsel, and move this Honorable Court that it shall, by *certiorari* or other proper process directed to the Honorable the Judges of the Supreme Court of the State

of Mississippi, require said Court to certify to this Court, for its review and determination, a certain cause in said Supreme Court of Mississippi lately pending wherein the petitioner, Alabama & Vicksburg Railway Company, Canal-Commercial Trust & Savings Bank of New Orleans, and Felix E. Gunter, were appellants and the said JACKSON & EASTERN RAILWAY COMPANY was appellee, and to that end they now tender herewith their petition and brief, with a certified copy of the entire record in the said cause in the said Supreme Court of Mississippi.

R. H. THOMPSON,

A. S. BOZEMAN,

S. L. McLAURIN,

MONTE M. LEMANN,

J. BLANC MONROE,

Counsel for Petitioners.

IN THE
United States Supreme Court

OCTOBER TERM 1924.

ALABAMA & VICKSBURG RAILWAY COMPANY,
ET AL.,

Petitioners,

versus

JACKSON & EASTERN RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE
OF MISSISSIPPI.

TO THE SUPREME COURT OF THE UNITED STATES:

The petition of the Alabama & Vicksburg Railway Company and of the Canal-Commercial Trust & Savings Bank of New Orleans and Felix E. Gunter (they being Trustees of a certain mortgage and deed of trust of said Alabama & Vicksburg Railway Company), Plaintiffs in Error, and the United States Fidelity & Guaranty Company, Surety on the Appeal Bond in the Supreme Court of the State of Mississippi, respectfully shows to this

Honorable Court, that your petitioner, the Alabama & Vicksburg Railway Company, is a standard Class 1 Railroad, owning and operating a standard line of railroad whereon it is engaged continuously in the transportation of interstate and intrastate passengers, freight, express and mail, it being one of the old, well-established and important carriers in the southeast of the United States.

That the Jackson & Eastern Railway Company is a comparatively new, unimportant and small railroad company incorporated in 1915, for the purpose of owning and operating a railroad from Union, Mississippi, to Jackson, Mississippi, a large part of which prospective line is still unbuilt. That the said Jackson & Eastern Railway Company is also engaged in interstate and intrastate commerce.

That in February, 1902, when the line of the Jackson & Eastern Railway Company had been constructed only from Union, Mississippi, to Sebastopol, Mississippi, a town about forty miles from a point on petitioner's railroad called Curan's Crossing, the Jackson & Eastern Railway Company filed a petition (see copy in the record) with the Circuit Clerk of Rankin County, Mississippi, seeking to condemn property of your petitioners at Curan's Crossing, described in the said petition as follows:

"3. That the following real property, rights, privileges and easements are sought to be condemned, for the purposes hereinafter stated, to-wit: A strip of land of varying widths, extending from Station 0/00 on the survey enumeration of the applicant, the Jackson & Eastern Railway Company, which 0/00 station is located on the center line of the Alabama & Vicksburg Railway

Company's track 1797 feet east from the first block signal semaphore east of the Alabama & Vicksburg Railway Company's bridge over Pearl River in an easterly direction along the surveyed line of the Jackson & Eastern Railway Company an average distance of 325 feet, the widths of said strip to be condemned are: At Station 0/00, 16 feet, being 8 feet on each side of the center line; at Station 0/50, 21 feet, being 8 feet on the right and 13 feet on the left side of the center line of the Jackson & Eastern Railway Company's survey; at Station 1/00, 26 feet, being 8 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 1/50, 27 feet wide, being 9 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2/00, 30 feet wide, being 11 feet on the right and 19 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2/50, 35 feet wide, being 15 feet on the right and 20 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3/00, 30 feet wide, being 20 feet on the right and 10 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3/25, 20 feet wide, being all on the right of the center line of the Jackson & Eastern Railway Company's survey; and at Station 3/75 coming to a point on the north right of way line of the Alabama & Vicksburg Railway Company's said survey, containing two hundred and thirty-two thousandths (.232) acres, and lies in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 14, Township 5, North Range East, Rankin County, Mississippi, which said center line of the proposed track of the applicant, the Jackson & Eastern Railway Company is more fully shown by a diagram hereto attached, marked Exhibit "A", and made a part hereof. (R. of Miss. S. C. 28, 385.)

"4. Your applicant would further show that the public use for which the strip of land, rights, privileges and easements hereinabove described, is for a right of way for a switch track and the connection of said switch with the main line of the

defendant, the Alabama & Vicksburg Railway Company at the point above described; and your applicant further shows that it is necessary for it to **OWN, OCCUPY AND USE** said strip of land, rights, privileges and easements above described, in order properly to conduct its business as a common carrier, for which purpose it was organized."

That the said condemnation petition concludes with a prayer reading as follows (R. of Miss. S. C. 29, 386) :

"Wherefore, your applicant prays that such steps be taken for the condemnation of said lands, rights, privileges and easements, for the purposes aforesaid, as are required by Chapter 43, and Section 4096 of the Annotated Code of 1906 of Mississippi.

And as in duty bound your applicant will ever pray."

THAT THE LAND THUS SOUGHT TO BE CONDEMNED CONSTITUTES A SECTION OF PETITIONER'S MAIN LINE TRACK, and that if the Jackson & Eastern Railway Company acquires the right to **own, occupy and use** the said strip of land, the continuity of petitioner's railroad will be destroyed and instead of one continuous line of road from Meridian, Mississippi, to Vicksburg, Mississippi, it will own two disconnected pieces of track separated by land of the Jackson & Eastern Railway Company; that the land described in respondent's condemnation proceedings was by respondent's own engineers at the request of petitioner's counsel, cross hatched on a blue print of petitioner's main line as per Exhibit "A" attached, where it appears as a wedge-shaped area bisecting petitioner's "main line to Meridian, Mississippi", and actually embracing the embankment, ties and rails of petitioner's said main line.

C 49° 10' 50"

E. H.

Minimum offset line
Area demanded of the
Ry. by the J&E Ry.

50' x Main Line
50' x Right of Way Line

4950

To Meridian

4953

4953

J&E Ry. Conk Line

A+V. Station 4953+75
Equals J+E. Station 0+00

Jackson + Eastern Ry.
Station 0+00 = A+V. Station 4953+75

4953+75.5 Cattle Guard.

Public Road

That moreover, the proposed location was entirely improper as a point of connection between the Alabama & Vicksburg Railway Company and the Jackson & Eastern Railway Company in that:

1. At the proposed point of connection the two railroads would approach each other on opposing curves.

a. Thereby impeding the views of the junction of the crews of the trains approaching it on each line, thus increasing the chances of accident.

b. Thereby making it necessary either not to elevate the outside rails of the tracks, a safety measure usually adopted on railroad curves, or else to have said tracks approach each other in opposing planes, in either case increasing the danger of accident.

c. Thereby making it necessary to cut for a switch connection, the outer rail of a curve, thereby entailing danger of derailment by switch splitting since centrifugal force would press the car wheel flanges closely against the outside rail and tend to cause them to catch in and split the switch inserted therein.

2. At the proposed point of connection, the two railroads would each be on a 10-foot embankment, thus materially increasing the danger, difficulty and expense of installing, maintaining and operating the proposed connection.

3. The proposed point of connection would be immediately adjacent to and would materially increase the hazard at an already dangerous and much used highway crossing at grade over the Alabama & Vicksburg Railway Company's tracks.

4. The proposed point of connection would be in the flood area of the valley of Pearl River and the building by the Jackson & Eastern Railway Company of an

embankment and line at that point would necessarily concentrate the flood waters of Pearl River on already exposed points of the Alabama & Vicksburg Railway Company's tracks, thus increasing the height of the flood against already exposed portions of the Alabama & Vicksburg Railway Company's embankment and increasing the danger of washouts of that embankment by Pearl River.

5, The point of connection would be between two trestles in the track of the Alabama & Vicksburg Railway Company, each about 400 feet in length and so close together that an Alabama & Vicksburg Railway Company train stopping with its locomotive at the proposed connection, would necessarily extend over one or the other of these trestles, thus endangering and obstructing its operatives in the handling of the trains and any passengers entering or alighting therefrom.

That the force and validity of these objections was testified to by disinterested witnesses of national prominence in railroad matters including Mr. E. M. Durham, formerly chief of the Engineering Department of the U. S. Railroad Administration, and Mr. A. A. Woods, Chief Engineer of lines west of the Southern Railway Company, and that the said E. M. Durham presented an actual survey showing that the Jackson & Eastern Railway Company could come to a junction with the Alabama & Vicksburg Railway Company at a point distant less than three miles from the proposed junction, which point would be free of all of the objectionable features present at the point of junction proposed by the Jackson & Eastern Railway Company. This survey showed and Durham testified that the route of the Jack-

son & Eastern Railway Company to the safer junction would be actually cheaper for the Jackson & Eastern Railway Company to build and cheaper for it to maintain.

That under the law of the State of Mississippi, as construed by the Supreme Court of that State, both previously (see *Vinegar Bend case*, 43 Sou. 292) and in this very case (see 95 Southern 733) the defendant in such a condemnation suit as was instituted by respondent before the Circuit Clerk, is prohibited from raising any question or making any defense save the question of the amount to be paid to it for compensation for the property taken or damaged. The defendant could not in that condemnation proceeding object to the fact that the Jackson & Eastern Railway Company was seeking to condemn its main line track and destroy the continuity of its railroad, nor could it deny its right to do so. It could not object that the proposed junction was an improper one. It could raise only one question, that is the question as to the amount to be paid it when the plaintiff in condemnation took its judgment and went into possession of the property sought to be condemned.

The language used by the Supreme Court of the State of Mississippi in the case at bar in laying down this doctrine, is as follows (95 Sou. 733):

"Under the facts alleged in the bill as above set out we think the complainant has a right to resort to a court of equity to have this question determined, as it could not raise the question in the Eminent Domain proceedings as has been decided by this Court in the case of *Vinegar Bend Lumber Co. vs. Oak Grove & G. R. Co.*, 89 Miss. 84, 43 Sou. 292. In other words, in this case, the Court construed the statute of eminent domain and adjudicated that the only question that could be decided in that proceeding was the amount of

damages. That the Court could not decide the right of the plaintiff in such proceedings to institute the proceedings, **nor could any other question be raised than that of the amount of damages,** and that the Circuit Court on Appeal from the judgment of the Eminent Domain Court had no greater right of jurisdiction than the Eminent Domain Court had. It is also decided that equity had jurisdiction and that it was the **court of exclusive jurisdiction in all other cases than the assessment of damages."**

(Black letters by present writer.)

That because it was thus deprived of an opportunity to defend itself in the condemnation court, your petitioner went into the Chancery Court of Lauderdale County, Miss., and sued out an injunction restraining the further prosecution by the Jackson & Eastern Railway Company of the condemnation proceedings. This bill was dismissed by the Chancellor on demurrer and *supersedeas* was denied to complainant, but on application to the Supreme Court of Mississippi, that tribunal first allowed a *supersedeas* and later reinstated the Bill and remanded the case. See 91 Sou. 902, 95 Sou. 733.

The case was then tried on its merits in the lower court, whereupon the Chancellor handed down a decree reading in part (R. p. 68):

"It is the opinion of the Court that the eminent domain proceedings instituted by the defendant against the complainant seek to condemn greater right in the property of the A. & V. Railway Company than a mere easement for the purpose of making its junction and it is the opinion of the Court that the J. & E. Railway Company, defendant herein, is not entitled to acquire a dominant right of ownership in the property of complainant under the law and **the application should be amended to that extent."**

Notwithstanding this finding, he dismissed the bill, thereby allowing the plaintiff in condemnation to secure a judgment for an interest in your petitioner's property greater than the Chancellor considered that the law permitted.

The case then went to the Supreme Court of Mississippi for a third time and was argued before a section consisting of three Judges of that Court. They being unable to agree, referred the case to the Court *en banc*. That Court then handed down a decision by a divided court, affirming the decision of the Chancellor, 101 Sou. 553. This decision of the Supreme Court of Mississippi together with its previous decision, 95 Sou. 733, which it held to constitute in part the law of the case, are here sought to be reviewed by the Alabama & Vicksburg Railway Company.

The last decision of the Supreme Court of the State of Mississippi (which is the highest court of that State in which the case could be tried) became final by the Court's action in overruling petitioner's suggestion of error on December 15, 1924, and petitioner immediately thereafter applied for and obtained from the Chief Justice of the State of Mississippi a writ of error with *supersedeas* to the Supreme Court of the United States. Said writ of error together with petitioner's assignments of error and the entire record and proceedings in this case have been certified to, filed and docketed in this Honorable Court, entitled Alabama & Vicksburg Railway Company, et al., Plaintiff in Error, versus Jackson & Eastern Railway Company, Defendant in Error, No. 389, October Term 1924, which record, with the consent of this Honorable Court, is presented as a part of this application.

Nevertheless it has been suggested to petitioners that the proper procedure whereby to have said case reviewed by this Court, is by writ of *certiorari*, and petitioners desiring to certainly secure a review of this case, and the time being limited by law within which a writ of *certiorari* may be applied for, and not waiving any of their rights by virtue of the said writ of error, but still insisting upon the right to prosecute the same, and being advised that said judgment of the Supreme Court of Mississippi became and is final as of date December 15, 1924, so that this Court could require the case to be certified to it for its review and determination, under the Act of Congress permitting any case wherein a judgment has been rendered by the highest court of a State in which a decision could be had, to be certified for review and determination, file this their petition for a writ of *certiorari*, concurrently with said writ of error and show the following grounds therefor, to-wit:

I.

Petitioners, in their petition for injunction, set up:

a. That both it and the defendant were engaged in interstate commerce.

b. That the Federal Interstate Commerce Act, Sec. 3, Paragraphs 3 and 4, as amended by the Transportation Act of 1920, vested in the Interstate Commerce Commission the exclusive right to compel connections and the use of terminal facilities and other property by and between railroads engaged in interstate commerce; and that this exclusive power in the Interstate Commerce Commission necessarily precluded any State or any tribunal or agency thereof from exercising such power.

c. That to allow defendant to proceed with its condemnation proceedings in the State tribunal was an interference with and denial to petitioner

of its right, privilege or immunity under said Federal Statutes.

(b) No tribunal, State or Federal, can transfer an essential section of the main line track of one interstate carrier to another interstate carrier for a like purpose without violation of the Contract Clause and of the Fourteenth Amendment of the Constitution of the United States.

Said rights, privileges or immunities claimed by petitioner under said Federal Constitution and Statutes were denied to it by the State Court. The error of that denial is aggravated and the fact that the Interstate Commerce Commission's exclusive jurisdiction should have been recognized is accentuated by the fact that the case presented is a case in which:

a. Two interstate carriers have disagreed as to the location of a junction point whereat there is to be afforded reasonable, proper and equal facilities for the interchange of traffic between their respective lines.

b. Two interstate carriers have disagreed as to the rights in or to the first carrier's property, which the second carrier can acquire at such junction, two questions which the Interstate Commerce Commission under the Interstate Commerce Act as amended, particularly Section 3, paragraphs 3 and 4, is specially vested with authority to determine.

c. The carrier seeking the condemnation frankly admits through its President that its reason for seeking to condemn the property in question, was that it hoped thereby to secure the right to use petitioner's costly bridge and main line track into Jackson, Mississippi, a right which could be given it, if at all, only by the Interstate Commerce Commission under Sections 3, paragraphs 3 and 4, of the Interstate Commerce Act as amended by the Transportation Act of 1920.

Respondent's President testified in part as follows
(S. C. Record, page 1003):

"Q. And if I understand you, your desire to go to Curan's Crossing for a junction is predicated on the thought that if you get there you will be able to get a switch movement over the A. & V.?

"A. I know it.

"Q. From whom will you get this switch movement?

"A. From the authorities that control both the A. & V. and the J. & E., the Interstate Commerce Commission."

d. The Respondent's President, before instituting the enjoined condemnation proceedings and after being told by petitioners that it had no objection to a junction at a proper place, but considered the point proposed impossible as a point of junction, wrote to the petitioner's President a letter in which he says:

"In view of your position, there is nothing further for us to do, **EXCEPT TO SUBMIT THE MATTER TO THE INTERSTATE COMMERCE COMMISSION FOR THEIR CONSIDERATION**, and, of course, we both will have to be guided by their conclusions."

II.

The basis of the second ground upon which petitioners seek relief is thus stated by Mr. Justice Anderson of the Supreme Court of Mississippi in his dissenting opinion in this case, 101 Sou. 556:

"The bill of the Alabama & Vicksburg Railway Company ought to have been sustained, in my judgment on another ground, and that is that the eminent domain application of the Jackson & Eastern Railway Company **failed to sufficiently describe the right or easement it sought to condemn**. It is unquestioned that the Jackson & Eastern Railway Company has no right under the statute to condemn the fee in the tracks and right-of-way

of the Alabama & Vicksburg Railway Company for the junction. Where a lesser interest than the fee in land is sought to be appropriated in a condemnation proceeding, the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest which is to be taken, and also with such certainty as to enable the jury to intelligently and according to law assess the compensation to be paid for the interest taken. *Pontiac Improvement Company vs. Board of Commissioners*, 104 Ohio State 447, 135 N. E. 635, 23 A. L. R. 866. Certainly the proceedings ought to be definite enough as to description of the right sought to be taken as that the owner of the fee will know how much he will have left after the proposed easement is taken. This is also necessary to enable the taxing authorities to properly assess the property. Unless what is taken by the condemnation proceedings is made definite how could the taxing authorities determine what assessment value to put on what was taken and what was left?"

Petitioners aver that (1) in view of the language quoted *supra* p. 12 from the Supreme Court of Mississippi wherein that tribunal expressly stated that petitioners can raise in the condemnation suit no question save the question of the amount of money to be paid to it, (2) in view of the language quoted *supra* p. 13 from the Chancellor who heard the case and who held that Respondent sought to condemn more than an easement; and (3) in view of the language quoted *supra* p. 17 from the dissenting opinion of Justice Anderson, who held that the condemnation petition does not sufficiently describe the property sought to be acquired, (4) in view of the language of the condemnation proceeding quoted *supra* p. 8, it is apparent that unless the Supreme Court of Mississippi is reversed and the condemnation proceed-

ing is enjoined, petitioners will be deprived of their property without due process of law and denied the equal protection of the laws in contravention of the Constitution of the United States, particularly the Fourteenth Amendment. This is so, for the reason, that unless the Supreme Court of Mississippi is reversed and petitioners' injunction is maintained, petitioners will be compelled to go before a jury of farmers with their hands tied so as to prevent their making any defense save on the question of amount of compensation and will have taken from them valuable property. **Just what property will be taken is the subject of a difference of opinion among the Mississippi Judges themselves.** This being so, certainly the jury will not and cannot know just what property is being taken; and petitioners, unless this fact is ascertained and made certain in advance, cannot make proper proof of their damages and cannot receive due process of law and the equal protection of the laws.

Petitioners point out that Sections 1867 and 1868 of the Mississippi Code of 1906, being the law under which Respondent is supposedly proceeding in the condemnation proceedings, read as follows:

"1867 (1692) JUDGMENT. Upon the return of the verdict, the Court shall enter a judgment as follows, viz.:

"In this case the claim of (naming him or them) to have condemned certain lands named in the application, to-wit: (here describe the property), being the property of (here name the owner) was submitted to a jury composed of (here insert their names) on the _____ day of _____, A. D. _____, and the jury returned a verdict fixing said defendant's due compensation and damages at _____ dollars, and the verdict was received and entered. Now, upon payment of the

said award, applicant can enter upon and take possession of the said property and appropriate it to public use as prayed for in the application. Let the applicant pay the costs for which execution may issue. "J. P."

"1868 (1693) RIGHTS OF APPLICANT AFTER THE JUDGMENT. Upon the return of the verdict and entry of the judgment, if the applicant pay the defendant whose compensation is fixed by it, or tender to him the amount so found and pay the costs, he or it shall have the right to enter in and upon and take possession of the property of such defendant so condemned, and to appropriate the same to the public use defined in the application; and in case the defendant and his attorney absent themselves from the court, the payment may be made to the Clerk of the Circuit Court for him, and such officer shall be responsible on his bond therefor and shall be compelled to receive it."

That as petitioner will be precluded from raising any issue in these proceedings save the question of the amount of the award, there will necessarily be inserted in the form of judgment prescribed by Article 1867 of the Mississippi Code, the description of the property sought to be condemned, as described *supra* this petition, page 7 and under Articles 1867 and 1868, the Respondent, upon payment of the amount of the award, will be privileged "to enter upon and take possession of said property and appropriate it to public use, as prayed for in the application", as set forth *supra*, in the quotation from the application, this petition page 9.

The Jackson & Eastern Railway Company has alleged:

"And your applicant further shows that it is necessary for it to **OWN, OCCUPY AND USE THE SAID STRIP OF LAND**, rights, privileges

and easements above described in order properly to conduct its business as a common carrier, for which purpose it was organized."

That the said Jackson & Eastern Railway Company will, therefore, unless restrained, pay the amount of the award and will then proceed "to own, occupy and use the said strip of land", which strip of land consists of a section of the main line of track, embankment and rails of your petitioners.

That there is no provision in the Mississippi Statutes for a joint use by the applicant and the owner whose land is condemned. The applicant is entitled by the very terms of the statute and of the judgment to enter upon and take possession of the property condemned, meaning the exclusive possession.

Petitioners aver that as a result of the action of the Supreme Court of Mississippi in dissolving its aforesaid injunction and permitting this to be done, it is being deprived of its property without due process of law and denied the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States, which is expressly pleaded and relied on by it in its original petition for injunction, and that the State of Mississippi is interfering with and burdening interstate commerce in violation of the Commerce Clause of the Constitution.

III.

Petitioners further aver that under Article 18, Sec. 1, of the Interstate Commerce Act, as amended, it is provided that:

"No carrier by railroad, subject to this act, shall undertake the extension of its line of rail-

road, or the construction of a new line of railroad, shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over and by means of such additional or extended line of railroad unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction and operation of such additional or extended line of railroad."

Petitioner avers that the Jackson & Eastern Railway Company, defendant herein, sought from the Interstate Commerce Commission such a certificate of public necessity and obtained a certificate of public necessity authorizing it to build a line of road from Sebastopol, Mississippi, to Jackson, Mississippi.

That said certificate of public necessity was apparently granted with reluctance, since in its opinion rendered July 12, 1921, in Finance Docket No. 9, the Commission said:

"The record as a whole fails to afford reasonable assurance that the project will become a permanently successful enterprise. However, since local interests are ready and willing to assume the burden with full knowledge of what the future may hold for the enterprise, it seems proper that they should be permitted to do so. But in view of the uncertain future of the road, we do not think it would be proper for us to sanction, at this time, the issuance of bonds to finance its construction."

That the said Interstate Commerce Commission did not approve or issue a certificate of public convenience covering a railroad from Sebastopol to Curan's Crossing and refused to consider, at this time, an application of

the Jackson & Eastern Railway Company to utilize petitioners' railroad bridge and main track into Jackson, Mississippi, but that notwithstanding these facts the Jackson & Eastern Railway Company is now proposing to build a railroad from Sebastopol, Mississippi, to Curan's Crossing, in the hope that it may hereafter secure some authority to utilize the main line and bridge of the Alabama & Vicksburg Railway Company.

Petitioners aver that they are entitled under said Act to have the Jackson & Eastern Railway Company build to Jackson, Mississippi, and not to Curan's Crossing or certainly to be heard before said Commission before said line is built to Curan's Crossing. That this right, privilege and immunity has been denied them by the decisions of the Supreme Court of Mississippi.

Petitioners therefore aver that the said judgments of the Supreme Court of Mississippi deny to petitioners their rights and privileges under the Federal Interstate Commerce Act as amended by the Transportation Act of 1920 and under the Constitution of the United States, particularly the Fourteenth Amendment; all of which appears, it is respectfully submitted, in the record of the proceedings of the Supreme Court of Mississippi in said case, which record is herewith submitted.

Wherefore, your petitioners respectfully pray that a writ of *certiorari* be issued under the seal of this Honorable Court, directed to the Supreme Court of Mississippi, sitting at Jackson, in said State, commanding the Court to certify and send to this Court on a day to be designated, a full and complete transcript of the record and the proceedings of this Court in said case to the end that this case may be reviewed and determined by

this Honorable Court as provided by Section 237 of the Judicial Code as amended and other laws on the subject, and that the said judgment of the Supreme Court of Mississippi may be reversed by this Honorable Court and for such further relief as may seem proper. And your petitioners will ever pray.

ALABAMA & VICKSBURG RAILWAY
COMPANY,

CANAL-COMMERCIAL TRUST &
SAVINGS BANK,

FELIX E. GUNTER,

UNITED STATES FIDELITY &
GUARANTY COMPANY,

By R. H. THOMPSON,

A. S. BOZEMAN,

S. L. McLAURIN,

MONTE M. LEMANN,

J. BLANC MONROE,

Attorneys.

February, 1925.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

Before me, the undersigned authority, personally came and appeared:

J. BLANC MONROE,

who, being duly sworn, did depose and say that he is of Counsel for the Petitioners, Alabama & Vicksburg Railway Company, Canal-Commercial Trust & Savings Bank, Felix E. Gunter and United States Fidelity & Guaranty

Company; that he knows of the above proceedings had and that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

J. BLANC MONROE.

Sworn to and subscribed before me, this 20th day of February, 1925.

WATTS K. LEVERICH, N. P.

FEB 27 1925

No. ~~100~~ 244

W. M. R. STANLEY
CLERK

IN THE
United States Supreme Court

OCTOBER TERM ~~1924~~ 1925

THE ALABAMA & VICKSBURG RAILWAY
COMPANY, ET ALS.,
Petitioners,

versus

JACKSON & EASTERN RAILWAY COMPANY.

BRIEF OF THE ALABAMA & VICKSBURG RAIL-
WAY COMPANY, ET ALS., IN SUPPORT OF
APPLICATION FOR CERTIORARI.

R. H. THOMPSON,
A. S. BOZEMAN,
S. L. McLAURIN,
MONTE M. LEMANN,
J. BLANC MONROE,
Counsel for Petitioners.

March, 1925.

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IN THE
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OCTOBER TERM 1924.

**THE ALABAMA & VICKSBURG RAILWAY
COMPANY, ET ALS.,**

Petitioners,

versus

JACKSON & EASTERN RAILWAY COMPANY.

**BRIEF OF THE ALABAMA & VICKSBURG RAIL-
WAY COMPANY, ET ALS., IN SUPPORT OF
APPLICATION FOR CERTIORARI.**

IF THE COURT PLEASE:

The dry and legally necessary facts of this case are stated in the petition for *certiorari*; the human interest facts, such as:

(1) The fact that every single engineer and every single conductor on The Alabama & Vicksburg Railway Company, men who would necessarily have to risk their lives in going over the proposed junction, have made in this record their earnest and vigorous protest against the proposed junction point which the Chairmen of their

respective organizations have denounced as a death trap, while not a single operative who would be connected with the running of a train over the proposed junction was put on the stand to defend that location by the Jackson & Eastern Railway Company;

(2) The fact that the Jackson & Eastern employee who located the junction point had so little standing as an engineer that within a few months of the time of making that selection, he was seeking a position as a rodman, a beginner's position, in the Engineering Department of The Alabama & Vicksburg Railway Company;

(3) The fact that some of the most eminent engineers of the United States, men entirely unconnected with the Alabama & Vicksburg Railway Company and entirely uninterested in this controversy, have sworn that "it would be difficult to find a worse location for this junction between Pearson and Pearl River". (See Durham, p. 775; Wood, p. 337);

(4) The fact that the Jackson & Eastern Railway Company's President has virtually admitted that the proposed point of junction was selected not on its merits, but in furtherance of an ulterior motive of the Jackson & Eastern Railway Company;

have not been stressed, because the length limits so rigidly and properly prescribed for applications for *certiorari* have not permitted. Suffice it to say that certainly from your petitioner's point of view, the Jackson & Eastern Railway Company's attitude towards the community in which the line is proposed to be built is "Let me build this line in my own way at whatever

cost or expense or danger to The Alabama & Vicksburg Railway Company, its property and its operatives, or I will not build it at all", and the community has wanted the railroad built.

As a result of this combination of desires, petitioner faces the probability of having thrust upon it, a junction point which will endanger, burden and seriously interfere with its interstate commerce operations. It avers that unless respondent's action is enjoined, it will moreover be deprived of a section of its main line track and right-of-way and have the continuity of its railroad destroyed.

Naturally, the Alabama & Vicksburg Railway Company being an interstate carrier threatened with loss of its rights, turns to this court for protection under the Federal Constitution and States. It predicates its prayer for relief upon the writ of error and superseedeas which it has sued out and upon the assignments of error therein set up. It predicates its prayer for relief here out of a superabundance of caution upon three propositions which it states as follows:

I.

The Interstate Commerce Act as amended by the Transportation Act of 1920 vests in the Interstate Commerce Commission exclusive jurisdiction of track connections between interstate carriers.

(a) No State tribunal may order such connections or fix the relative rights of carriers thereunder;

(b) No tribunal, State or Federal, can transfer an essential section of the main line track of one interstate carrier to another interstate carrier for a like purpose

without violation of the Fourteenth Amendment and the Contract Clause of the Constitution of the United States.

II.

(a) When a State condemnation statute prevents a defendant in condemnation from raising in the condemnation suit any issue whatever save as to the amount of compensation to be paid, the condemnation defendant is denied due process of law and the equal protection of the law guaranteed by the Fourteenth Amendment, if the petition for condemnation fails clearly to declare the precise property and the precise interest therein sought to be condemned, since in the absence of such freedom from ambiguity, defendant cannot properly prepare and present itself from limited defense.

III.

Until a railroad has obtained a certificate of public necessity from the Interstate Commerce Commission, it cannot build a new line or connection with an established line; nor can it, after obtaining such a certificate, deviate from the route therein indicated in building the new lines; nor can it resort to State agencies to force a junction with another railroad at a point not on the route named in the certificate of public necessity without violating with other railroads' rights, privileges and immunities under the Interstate Commerce Act as amended by the Transportation Act of 1920.

These propositions will be discussed *seriatim*.

1-A.

The Interstate Commerce Act As Amended by Trans-

portation Act 1920 Vests in the Interstate Commerce Commission Exclusive Jurisdiction of Track Connections Between Interstate Carriers. No State Tribunal May Order Such Connections or Fix the Relatives Rights of the Carriers Thereunder.

In this connection, we point out the following cogent facts:

Both the Alabama & Vicksburg Railway Company and the Jackson & Eastern Railway Company are engaged in interstate commerce. In fact, that commerce constitutes the bulk of the business of each company. The evidence on the subject is in part as follows:

**INTERFERENCE WITH INTERSTATE COMMERCE,
MAIL AND EXPRESS.**

MR. L. A. JONES

testified (p. 34):

Q. What proportion of the regularly scheduled trains of the A. & V. handle interstate commerce?

A. All of them.

Q. Do the trains of that road, crossing this point of intersection, handle United States mail?

A. Practically all the passenger trains handle mail. Four carry postoffice cars.

Q. What, if any, importance is the Alabama and Vicksburg Railway as an artery in the Railroad Service?

A. The A. & V. is a Class One railroad, and forms a line from Southeast Mississippi to Vicksburg on the West of the State and connects with a line to the southwestern part of the country, and so forms a very substantial artery from the southeast to the southwest.

Q. What effect would any such pretended point of junction with the Alabama and Vicksburg Railway have upon interstate commerce?

A. It would interfere with all our trains.

Q. You spoke of the Alabama and Vicksburg Railway being a Class One road, what do you mean?

A. Railroads, for conveniences, are classed by the Interstate Commerce Commission.

Q. Will you please state to the Court whether or not the track of the A. & V. Railway at the point where it is in the condemnation proceedings sought to be condemned essential to interstate commerce and the United States Mail?

A. Yes, sir, absolutely. It is one of the essential points in the main track.

Q. Can you give us in terms of dollars, the gross revenue of the A. & V.?

A. Approximately the gross revenue of the Alabama and Vicksburg for the years 1921, 1922 and 1923—

Q. What was it in 1920?

A. In 1920, it was about \$10,000.00 a day; in 1921, something over \$9,000.00; in 1922, due to the strike, under \$9,000.00 a day; and this year, a little over \$11,000.00 a day.

Q. Per day?

A. Yes, sir.

Q. In case your traffic was suspended for a day, what would be the effect on your revenue?

A. It would be very serious. Of course, if it was just for a day it would not be so great, but the result would be that shipments would be re-routed, or routed rather than would otherwise go by the A. & V. to go by New Orleans or Memphis, and quite a lot of passengers, when they knew that our traffic was interrupted, would go by other routes.

MR. J. C. STAMM

testified (p. 136):

Q. Has the A. & V. a single track or a double track?

A. It is a single track line.

Q. Has it any branches?

A. It has no branches.

Q. The fact of its being a single track and

having no branches, would that increase the seriousness of the damage resulting from the bank getting in bad in any locality?

A. Yes, sir. There is only one line there and there is no opportunity for assistance until they could repair any damage to the track.

Q. Are you familiar with the character of the traffic of the A. & V.?

A. Yes, sir.

Q. Can you tell us what proportion of its trains which operate over this proposed junction point is engaged in interstate commerce?

A. All the passenger trains are engaged in handling interstate commerce and all the freight trains.

Q. Are any of the trains engaged in carrying United States Mail?

A. We operate four passenger trains each way every day, and each of these passenger trains carry United States Mail. Three each way carry mail cars and the other two carry mail.

Mr. S. A. Neville (p. 202) admits that the J. & E. is engaged in interstate commerce and (on p. 889) he states that the success or failure of his road will depend on its divisions of the rates to Ohio River crossings, thus clearly indicating that he expects the bulk of the business to be interstate. He also admits that the bulk of his freight is lumber which will move East out of the State and that 80% of his freight will be in carload lots.

Second, the record shows conclusively that the real object of the Jackson and Eastern Railway Company is to obtain the use of the main line track and bridge of the Alabama and Vicksburg Railway Company.

If the Court will turn to the testimony of defendant's own engineer and star witness, Mr. Stacker, it will find him swearing (R. p. 598):

"Q. Mr. Stacker, Mr. Duffee testified that they started out to run a line of railroad from Sebastopol to Jackson. Why didn't you run your road to Jackson?

A. Well, we run the line very close to Jackson. We considered that we would be practically at Jackson. We are going towards Jackson.

Q. Had you in mind in coming to this point anything in regard to the bridge of Pearl River?

A. The bridge of the A. & V.?

Q. Was that considered by anybody?

A. The consideration was that we would be enabled to make arrangements with the A. & V. and cross the river by the A. & V. bridge.

Q. And did that consideration weigh with you in locating the proposed junction point?

A. *We wanted a junction with the A. & V. so we could use the A. & V. track and bridge, portion of the track West of the river until we could enter Commerce Street.*

Such a user could, of course, only be obtained, if at all, through the Interstate Commerce Commission.

Third, This is to be done according to the testimony of Mr. Neville in order to make the J. & E. Railway Company a link in a through system of interstate commercial carriers acceptable to the Interstate Commerce Commission under the consolidation provisions of the Transportation Act of 1920. His testimony on that subject is as follows:

(R. p. 927):

Q. Now, going back to the proposition that you are testifying about, after the timber was removed, the railroad would have to be abandoned. Why would you have to abandon the road?

A. Simply because the road could not be utilized in the scheme of consolidation of the Interstate Commerce Commission and the Act of Congress at this time. It is not in line with the

scheme of connection of railroads. If this junction was made at Pearson, I could not perfect any arrangements with any road running North or South, couldn't join."

(R. p. 985):

Q. You stated yesterday that in order to live a short line road such as you had contemplated building would have to form a connecting link between other lines. What other lines have you in mind as a connecting line between them?

A. The G. & S. I. and the N. O. G. N.

Q. The N. O. G. N. has terminal facilities at Jackson?

A. Yes, sir.

Q. And has a right-of-way in the streets of Jackson?

A. Yes, sir. The N. O. G. N. has a right-of-way behind the Old Capitol if it has not been sold.

Q. And that right-of-way would be in a direct line of the route A-B, if you went straight across the river?

A. I have no authority to use their right-of-way.

Q. I asked you if that right-of-way of the N. O. G. N. would not be on a direct route, A—B?

A. Then I would have to come down here nearly to Curan's Crossing.

Q. But isn't it on a direct line as shown here on this map?

A. Taking an air line, it is direct. Still you would have to come down here even with Curan's Crossing across the river.

Q. I am speaking of the N. O. G. N. behind the old Capitol.

A. If you wanted to go on an extremely northern air line it would be better, but I could get better service by coming down here.

Q. And that would be quickest?

A. Yes.

Q. The northern end of the N. O. G. N. right-of-way would be the quickest way?

A. Yes, sir.

Q. Materially so?

A. Some, yes.

Q. Now, if you did that you would be making a direct connection with your line in the yard of the N. O. G. N., which is your objective?

A. Yes, sir.

Q. Whereas, if you come down to Curan's Crossing you would have to connect with the N. O. G. N. by going over the A. & V. Is that correct?

A. That is correct.

Third, Neville also testified that another, to him, compelling reason why he wished to make the junction at this unduly dangerous Curan's Crossing was because he thought that if the junction was made there, the Interstate Commerce Commission would compel the A. & V. Ry. Co. to handle his freight for him into Jackson on a switch movement. His testimony on this subject is as follows:

(R. p. 1003):

Q. And if I understand you, your desire to go to Curan's Crossing for a junction is predicated on the thought that if you get there you will be able to get a switch movement over the A. & V.?

A. I know it.

Q. From whom will you get this switch movement?

A. From the authorities that control both the A. & V. and the J. & E., the Interstate Commerce Commission.

Q. If you are unable to get the Interstate Commerce Commission to grant you a switching movement out of Curan's Crossing the main defense, from your point of view, between Curan's Crossing as a junction and the junction point suggested by the A. & V. will be eliminated?

A. Absolutely, as a defense only.

Q. What do you mean?

A. I mean that any line, that under the present law policy governing *the consolidation and*

building of carriers, to make the line a permanent success it must go into Jackson to make connections with other lines.

Q. It must go into Jackson, how, on its own rails?

A. No, sir.

Q. How?

A. Either go in on its own rails or the joint rails of other carriers.

Q. What other carriers?

A. The A. & V.

Q. Then: it is your testimony that your line cannot be a permanent success unless it is granted the use of the facilities of the A. & V.?

A. Not that, it could go in on its own rails.

Q. I asked you if it was going in on its own rails?

A. I don't know.

Q. Didn't you twice say it couldn't go in on its own rails?

A. I didn't say so.

Q. If you go in on your own rails, where will you go?

A. I don't know. I have no authority to build in any other way.

Q. Have you made any plans to go in on your own rails?

A. No, sir.

Q. Have you made any plans to go in on the rails of the A. & V.?

A. I have tried to.

Q. What terminals do you propose to use if you went in on the A. & V. rails?

A. I first considered using the N. O. G. N. line or the A. & V. terminals.

Q. Why did you not propose to go across the river directly and build your own bridge and terminals?

A. In the first place, I have no authority from the Interstate Commerce Commission to do that, and in the second place it would be a financial impossibility for me to do it.

Q. You mean that the cost of the bridge and the cost of the terminals would be financially prohibitive?

A. Yes, sir, and the financial operations inside would be impossible.

Q. I understand you by being financially impossible, you mean that if you build a bridge and acquire terminals in Jackson that the interest charges on that investment would be so heavy that your road couldn't stand it?

A. Yes, sir. The J. & E. Railway is only 75 miles long and a road that length couldn't undertake a program that would be involved in such a proposition as outlined by you.

Q. Then you propose to use the costly bridge and the costly terminals of the A. & V.?

A. I am not proposing to do that now. I did originally, but not now.

Q. You will later on have your own bridge or else use the bridge and terminals of some other carrier?

A. Yes, sir.

Q. You say that to build your own bridge and terminals is a financial impossibility?

A. For the J. & E. under the present situation.

Q. Then you propose to use, if you go into Jackson, the bridge and terminals of the A. & V.?

A. I do not propose to do it now.

All of these 4 questions, namely (1) Jurisdiction of Interstate Carriers; (2) The use of the main line track and terminal facilities of the A. & V. Ry Co.; (3) The acceptableness *vel non* of the proposed J. & E. Ry. Co. to the Interstate Commerce Commission as a link in a system of consolidated connecting carriers; and (4) The forcing of the A. & V. by the Interstate Commerce Commission to handle through business into Jackson on a switching charge *are matters peculiarly and admittedly within the jurisdiction of the Interstate Commerce Commission*, and if the proper place for the location of this junction is to be determined because of its bearing upon

these four issues, it would appear not only a logical, but essential, that the Interstate Commerce Commission should have and retain jurisdiction to fix the point of junction. The J. & E. is asking that this junction be placed at a point considered by eminent engineers and by all the men who must pass over it to be improper and dangerous, because it says that it is the point which the Interstate Commerce Commission would consider most desirable in granting it the four items of advantage listed. Its statement to that effect is unsupported and is contradicted but is its sole reason for demanding this improper junction. We point out that if the propriety of the point of junction is to be determined by future action by the Interstate Commerce Commission, *then the junction point should be determined by that body.*

The matter apparently appealed to President Neville, himself, in that way, as appears from his letter to President Jones of October 26, 1921, in which he says in part:

"In view of your position, there is nothing further for us to do **EXCEPT TO SUBMIT THE MATTER TO THE INTERSTATE COMMERCE COMMISSION FOR THEIR CONSIDERATION**, and, of course, we both will have to be guided by their conclusions."

and as appears from the fact that he actually filed a petition with the Interstate Commerce Commission, but on being informed that it was prematurely filed, because the two roads were not near enough to join, (the J. & E. not having then or yet built its line to the junction point) withdrew it. This withdrawal took place long after the injunction herein was sued out by the A. & V.

Ry. Co. When the injunction was sued out the application was actually pending before the Interstate Commerce Commission.

THE LAW.

That the Interstate Commerce Commission, and it only, has jurisdiction to order a junction between these carriers under these circumstances, affirmatively appears from the following statutory law and judicial decisions:

The Interstate Commerce Act, as amended by the Transportation Act 1920, *changed the prior law* by conferring the following additional authority upon the Interstate Commerce Commission. We quote from Section 3, Paragraphs 3 and 4, of the Act, as follows:

"(3) All carriers engaged in the transportation of passengers or property subject to the provisions of this Act, shall according to their respective powers, *afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines* and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

"(4) If the Commission finds it to be to the public interest and to be practicable without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, *including main line track or tracks for a reasonable distance outside of such terminal* of any carrier by another carrier or carriers on such terms and for such compensation as carriers affected may agree upon, or in the event of a failure to

agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings."

The Sections thus written into the Interstate Commerce Act by the Transportation Act of 1920 have recently been construed by the courts of last resort of the States of Ohio and New York, and in each instance, it has been held that since the adoption of the Transportation Act of 1920, the Interstate Commerce Commission has exclusive jurisdiction of the subject matter of track connections between carriers engaged in interstate and intrastate commerce. The decisions on the subject are as follows:

Supreme Court of Ohio, Dec. 4, 1923, *Lake Erie, A. & W. R. Co. vs. Public Utilities Commission*, 141 N. E. 847:

(Syllabus):

"Where a railroad engaged in interstate and intrastate commerce invokes the jurisdiction of the Interstate Commerce Commission for an order requiring another railroad likewise engaged in interstate and intrastate commerce to join in making a physical connection between the two lines, pursuant to Paragraph 3, Section 3, of the Interstate Commerce Act, as amended by the Transportation Act of February, 1920, (U. S. Comp. St. Supp. 1923, §8565[3]), and before final determination thereof such applicant road, without dismissing such proceeding before the Interstate Commerce Commission, makes application to the Public Utilities Commission of Ohio for exactly the same connection, and secures the same in so far as intrastate commerce is concerned, and thereafter the Interstate Commerce Commission, whose jurisdiction was first invoked, having fully heard

the original application, denies the same upon grounds affecting both interstate and intrastate commerce, held under such circumstances the jurisdiction of the Interstate Commerce Commission is exclusive and the Public Utilities Commission of Ohio was without jurisdiction to grant such order."

(P. 849) :

"The Court of Appeals of New York has recognized the exclusive character of this jurisdiction in the case of *People of State of New York ex rel. New York Central Rd. Co. vs. Public Service Commission*, 233 N. Y. 113, 135 N. E. 195, 22 A. L. R. 1073, in which it was held that the Public Service Commission of that State had no authority to make an order directing two railroad companies engaged in interstate and intrastate commerce, whose lines ran through the City of Batavia, to install a connecting line; that both of the railroads in question being engaged in interstate and intrastate commerce, the relief sought could be granted only by the Federal Interstate Commerce Commission, in compliance with the Interstate Commerce Act, Section 3, Paragraph 3, as amended by the Transportation Act of 1920.

"It is contended that the contrary view has been held by the Supreme Court of Wisconsin in *Chicago, St. Paul, Minneapolis & Omaha Ry. Co. vs. Railroad Commission of Wisconsin*, 178 Wis. 293, 189 N. W. 150.

"Referring to the decision of the Court of Appeals in this last named case, the Supreme Court of Wisconsin, at page 279 of 178 Wis., at page 152 of 189 N. W., uses this language:

"The Court of Appeals reversed the order of the Public Service Commission requiring a connection, on two grounds: First * * * and Second: *Because Congress by the passage of the Transportation Act of 1920 * * * so amended the second paragraph of Section 3 of the Interstate Commerce Act as to give the Interstate Commerce Commission jurisdiction of connecting tracks, and by so doing took*

away the right of a State Commission to act upon the subject. The latter reason, even if conceded to be a valid one where it applies and upon that subject we express no opinion, does not affect this case because the proceedings were begun and the order made before the passage of the Federal Act.'

"But conceding that the Wisconsin case denies the exclusive character of the jurisdiction conferred by Paragraph 3, Section 3, of the Interstate Commerce Act, yet it, and also the New York, California and South Carolina cases, are to be distinguished from the case at bar, for the reason that in none of them had the affirmative jurisdiction of the Interstate Commerce Commission been first invoked by the applicants."

"We are confronted with the situation, where a jurisdiction voluntarily invoked having been exercised, its effect cannot be denied."

"It is self-evident that this connection once made is equally available for interstate as well as intrastate commerce. The same connection is asked for before the Interstate Commerce Commission, and though granted by the Ohio Public Utilities Commission, in so far as intrastate traffic is concerned, its use for interstate commerce is at once available so far as the physical connection is concerned."

Court of Appeals of New York, March 7, 1922, *People ex rel. New York C. R. R. Co. vs. Public Service Commission*, 233 N. Y. 113, 135 N. E. 195, 22 A. L. R. 1073:

(Syllabus 1):

"State authorities cannot compel interstate carriers to make physical connections between their tracks for interchange of traffic, notwithstanding the Federal Transportation Act provides that the authority of the Interstate Commerce Commission shall not extend to the construction

of spur, industrial, team, switching, or side tracks located wholly within a State."

(P. 1076) :

"We are also of opinion that the relator and the Lehigh Valley Company being engaged in interstate and intrastate commerce, the relief sought in this proceeding **CAN BE GRANTED ONLY BY THE INTERSTATE COMMERCE COMMISSION.**

"The Transportation Act of 1920 (41 Stat. at L. 479, Chap. 91, Fed. Stat. Anno. Supp. 1920, p. 120), §405, amended the second paragraph of §3 of the Interstate Commerce Act to provide: 'All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.'

"A violation of that provision of the Act of Congress authorizes a complaint by any interstate party to the Interstate Commerce Commission, and, after a hearing before that Commission, to such relief as the facts warrant. The Interstate Commerce Commission is clothed with authority by the section quoted to compel carriers to afford reasonable and proper facilities for the interchange of traffic between their respective lines. The order made by the Public Service Commission commands relator and the Lehigh Valley to make such track connections between their roads as shall be necessary or proper to establish and furnish adequate and convenient interchange of freight between said roads. To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several commissions mentioned were clothed with

jurisdiction to grant the relief sought, and require us to ignore the well established principle of law that, the Congress having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, and exercise of like power by the State is thereby superseded. *Erie R. Co. vs. New York*, 233 U. S. 671, 58 L. Ed. 1149, 52 L. R. A. (N. S.) 266, 34 Supt. St. Rep. 756, Ann. Cas. 1915D, 138; *Chicago R. I. & P. Co. vs. Harwick Farmers' Elevator Co.*, 226 U. S. 426, 57 L. Ed. 284, 46 L. R. A. (N. S.) 203, 33 Sup. Ct. Rep. 174.

"Counsel for the Public Service Commission calls attention to subdivision 22 of §1 of the Interstate Commerce Act as amended by §402, Transportation Act 1920, which reads as follows: 'The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.'

"Paragraphs (18) to (21) referred to, prohibit a carrier from extending its line of road or the construction of a new line or road, or the operation of any extension, save when permitted so to do in the manner provided for in the paragraphs enumerated. Counsel for the Commission argued that, the line or piece of road ordered to be constructed being wholly within the State, the Public Service Commission was empowered to make the order under review. We do not coincide with the argument of counsel. The track ordered to be constructed was not a spur, industrial, team, switching or side track, but rather, as stated in the order of the Commission, was a track connection between the two roads of relator and the Lehigh Valley, and said two roads were also commanded to lay and install such other tracks as may be necessary to furnish adequate and convenient interchange of freight between said railroads.

"The order of the Appellate Division should be reversed, and the determination of the Public Service Commission annulled, with costs in this Court and the Appellate Division.

"Hissock, Ch. J., and Cardosa, McLaughlan, and Andrews, J. J., concur.

"Crane, J., concurs on first ground stated in opinion.

"Pound, J., not voting."

We respectfully submit that this reasoning is sound and that under the paragraphs quoted from the Transportation Act of 1920, Congress has taken possession of the field of track connections and has vested the exclusive power to regulate and control such connections in the Interstate Commerce Commission. This being so, the power of the State either through a railroad commission or through a condemnation court, or otherwise, to give or regulate track connections is at an end.

There can be no division of the field: The power of Congress is paramount and exclusive.

233 U. S. 671, *Erie R. R. Co. vs. N. Y.* (58 L. Ed. 1149):

"After Congress acts on a matter within its exclusive jurisdiction there is no division of the field of regulation."

There is no need to multiply authorities on that point.

If we are right in this, then plainly the Mississippi Railroad Commission would be without authority to make such a connection and *a fortiori*, the Mississippi *condemnation court*, a tribunal presided over by a Justice of Peace, in which nothing may be contested save the amount of damages to be awarded would be without

power to make such a junction. If the Interstate Commerce Commission has the exclusive jurisdiction of subject matter, then plainly the State of Mississippi and the various subdivisions and instrumentalities of that State are without that power, since they have no power, save such as is vested in them by the State, and if the State is devoid of power, certainly they are without it. Power, like water, can rise no higher than its source. If this position be correct, the fallacy of the contention of the Jackson & Eastern Railway Company is revealed. That company boldly asserts and arrogates **TO ITSELF THE EXCLUSIVE RIGHT** to determine where this junction shall be. It asserts the right to locate the junction **WHERE IT AND IT ONLY DESIRES IT** and where the Alabama & Vicksburg Railway Company and the State Highway Authorities, represented by the Highway Commissioner, who took the stand and swore that the proposed junction would constitute a serious flood menace to the State Highway, do not desire it and have compelling reason for not wanting it, and it proposes to carry out its own arbitrary wishes in the matter by invoking the aid of the State's condemnation court.

If this be lawful, then what becomes of the Commerce Clause of the Constitution, the Interstate Commerce Act and Transportation Act of 1920? It needs no lively imagination and no gift of prophecy to discover that if a State J. P. Court can saddle upon an interstate railroad such junction points as it desires, that State J. P. Court cannot only regulate, but can destroy the interstate railroad. There can be no half measures, no midway point, no twilight zone, no concurring jurisdiction. As the New York Court points out, either the

State tribunal or the Federal tribunal must have exclusive jurisdiction, else we would be faced at once with the situation where the Federal tribunal would prohibit the junction, while the State tribunal would order it installed, or vice versa. This being so, it cannot be doubted that the proper authority to have exclusive jurisdiction and to give consideration to the rights of the various parties and the public and to actually order the junction is **NOT A STATE INSTRUMENTALITY** at all, but the Interstate Commerce Commission, which in turn is obligated, when it passes upon the question, to protect and reserve to the Alabama & Vicksburg Railway Company the rights guaranteed to it by the Constitution of the United States.

1-B

To Permit a Small Unimportant Railroad to Condemn the Right to "Own, Occupy and Use" for its Purposes a Section of the Main Line Track of one of the Important Railroad Arteries of the State, which Section of Track has been Owned and Used as the Main Line for Many Years by the Larger Railroad Under Its Charter from the State and which Section of Main Line Track is Essential to the Maintenance of the Continuity of Its Trunk Line, Is to Deprive the Larger Railroad of Its Property Without Due Process of Law to Deny It the Equal Protection of the Law to Devest Its Vested Rights and to Impair the Obligation of Its Contract with the State, the Whole in Violation of the 14th Amendment and the Commerce and Contract Clauses of the Federal Constitution.

It appears from the condemnation petition, which is quoted in the petition for certiorari (p. 9), that the J. & E. Ry. Co. is seeking "to own, occupy and use" the main line track of the A. & V. Ry. Co. It appears from the record that the A. & V. Ry. Co. is a railroad corporation chartered under the laws of the State of Mississippi, which has owned, occupied and used this section of its main line track for many, many years. It appears that the line of the A. & V. Ry. Co. is a practically straight, single line of track without branches extending from Meridian, Mississippi, to Vicksburg, Mississippi, and it appears that the section of track sought to be condemned by the J. & E. Ry. Co. is about midway between Meridian and Vicksburg, and that if this section is condemned, the continuity of the line of the A. & V. Ry. Co. will be broken and its railroad divided into two disconnected pieces of track. We have seen by the admission of President Neville of the Jackson & Eastern, himself (p. 957), that the traffic of the two railroads may not even be compared, the A. & V. Ry. Co. being a trunk line and one of the important through interstate rail and mail routes of the southwest, while the Jackson and Eastern is a not yet complete experimental route and is *an enterprise of so doubtful a nature that the Interstate Commerce Commission has been unwilling to permit it to sell its bonds to the public*, the Interstate Commerce Commission's finding on this subject being as follows:

(P. 858):

"The record as a whole fails to secure reasonable assurance that the project will become a permanently successful enterprise. However, since local interests are ready and willing to assume the burden with full knowledge of what the future

may hold for the enterprise, it seems proper that they should be permitted to do so, *but in view of the uncertain future of the road, we do not think it would be proper for us to sanction at this time the issuance of bonds to finance its construction.*"

We have quoted President Neville's own statement on oath in this case that the purpose of the J. & E. in seeking to condemn the A. & V. main line was to save itself expense.

That under these circumstances, the J. & E. Railway Company could not acquire through any state instrumentality the right to *own, occupy and use* a section of the main line of the A. & V. Ry. Co., without infringement of the rights, privileges and immunities guaranteed to the A. & V. Ry. Co. by the Constitution of the United States, particularly the contract clause and the XIV amendment, is conclusively demonstrated by the following authorities and by the reasoning upon which these authorities rest.

20 C. J. page 606, §92:

"A limitation on the power of a railroad company to appropriate the property of another railroad is that it cannot take the property of another company to apply it to the same use. If the taking would result merely in a change of ownership without affecting the use of the property, it becomes a matter of mere private concern without at all affecting the public interest. Nor can one railroad company take a fragment of a competing road constituting the most valuable part of it where this will destroy the usefulness and value of the remaining fragment."

Elliott on Railroads, 3rd Edition, §1130:

"So, it is said that, 'while a public service corporation like a railroad company is bound to ren-

der to the public certain services appropriate to its particular functions, it is not bound to permit its property to be subjected to use by a rival corporation, unless by express statutory enactment and by due process of law thereunder. And, where the appropriation of the franchise of a street railroad company by a railroad company *was made merely as a matter of economy, and to avoid the purchase of valuable property which the railroad company must have acquired to reach its terminus without interference with the street railroad, it was held that no such necessity existed.*

Elliott on Railroads, 3rd Edition, §1225:

"Taking right of way of another road: When not allowed. Where the statute confers only a general authority to condemn property for railroad purposes land appropriated by a railroad company for public use can not afterwards be appropriated by another company for a similar use where the two cannot coexist, *except in case of a necessity so absolute that without such appropriation the grant to the latter company will be defeated*, a necessity arising from the very nature of things, over which the company has no control, *not one created by the company itself for the sake of convenience or economy.* As a general rule, under such authority, a corporation will not be permitted to condemn property already devoted to the public use for any purpose wholly inconsistent with such use. This rule seems particularly applicable where one company is seeking to condemn and take the right of way of another company longitudinally. **THUS, IT HAS BEEN HELD THAT ONE RAILROAD COMPANY CANNOT APPROPRIATE A PORTION OF THE RIGHT OF WAY OF ANOTHER RAILROAD COMPANY FOR THE PURPOSE OF BUILDING A PARALLEL ROAD.** Nor will one railroad company be permitted for any purpose to take such a part of the line of another road as to practically destroy such road. And courts should give due consideration to the question of the future needs of a railroad in fulfilling its chartered purpose and

performing its public duty as a common carrier before they undertake to deprive a railroad company of any part of its right of way at the instance of another corporation. Where a petition by a railroad company for the appointment of commissioners to condemn the 'located route' of an existing railroad shows that it seeks to condemn a part of the route generally, and not merely for the purpose of crossing, an order made thereon will be set aside. And where a railroad corporation is seeking to condemn a longitudinal section of the right of way of another company for its exclusive use, it may be restrained by injunction unless express authority to make such condemnation has been conferred."

163 Fed. 724, *Elkins Ry. Co. vs. Western Md. R. Co.* (p. 732):

"It must be conceded that, where one railroad company has secured under its charter rights the right of way and built thereon its line of road and is using the same for public uses, *the Legislature could not authorize the taking wholly thereof by another railroad corporation for like public use.* The extent of its power would be to authorize the second company to place upon the land an additional burden or easement on or over it to be constructed so as 'not to impede transportation of persons or property along the same' by the first corporation owning the fee title to the land. These fundamental principles were well set forth and settled by Tucker, J., in the *Tuckahoe Canal Company vs. Tuckahoe & James River Railroad Co.*, 11 Leigh (Va.) 42, 36 Am. Dec. 374. Where railroads cross each other for the mutual benefit of both, and do 'not impede the transportation of persons and property along the' route of the first one owning and operating the right of way, the Legislature may well direct as it has in clause 7, §2343 (Chapter 54, §50), that the railroad intersected 'shall unite with the corporation owning such new railroad in forming such intersection', but this section cannot be construed as, first, authorizing the new company to take wholly the property of the old

to the destruction of its right to use and operate its road; nor, second, to take such right of easement and joint use without paying just compensation. Such a construction of this statute would be to allow confiscation and destruction of vested rights in the older company which are always to be first considered."

(P. 734-735) :

"If necessary, I would hold that, if such condemnation were attempted, the equity court would have full power to enjoin and stay the prosecution of any such proceeding at law until it had by its decree, fixed the location and character of the crossing to be condemned. I have deemed this discussion necessary in order to determine the contention of the electric company that it is entitled to have the crossing of its choice as a matter of right. * * *

"If then, this court must determine, as such seems to be the requirement of the law, the location of a crossing over defendant's tracks for this electric road, I feel constrained to say from the report of the engineers and the evidence in the case that such crossing should not be fixed or allowed at the point asked for by the electric company. Without discussing the evidence, it clearly shows that such crossing would be very dangerous to the railroad and to the public; that it would be very expensive to both roads, would very greatly impede the railroad company's necessary operations, and can be avoided. So far as crossing at First Street is concerned, I think it practicable, but undesirable, far better than the one sought, however."

186 Fed. 1022, *Elkins Ry. Co. vs. Western Md. Ry.*

Co. Same case on appeal:

"PRITCHARD, Circuit Judge. The learned judge who heard this case below prepared an exhaustive opinion clearly setting forth the various points at issue. We have carefully considered the record and the evidence that was heard by the

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court below, and in view of the facts and circumstances surrounding this case we are of opinion that the rulings of the lower court were eminently proper, in as much as the opinion of the lower court, reported in 163 Fed. 723, contains a full statement of the facts and deals with the various questions of law presented, we adopt the same as the opinion of this court. For the reasons stated, the decree of the lower court is affirmed."

**CERTIORARI WAS DENIED ON THIS CASE,
223 U. S. 725.**

141 Fed. 578, *So. Dakota Cent. Ry. vs. Chicago, M. & St. P. Ry. Co.*

"Although corporations engaged in business of a nature which requires them to serve the public are said to be public corporations, they are, in fact but private enterprises inaugurated for the benefit of their stockholders. While railroads are subject to use for the public benefit, they are owned, not by the public, but by corporations, which so far at least as ownership is concerned are private corporations. And if one such corporation may take the property of another, so as to deprive the latter of the use to which it was devoted, except in cases expressly authorized by the statute, or where public necessity demands such taking, there would be no reasonable limit to the conditions under which the power of eminent domain might be exercised. The full extent to which any of the courts have gone upon this subject is that the land appropriated to a particular public use is not, under all circumstances, withdrawn from liability to be taken by legislative authority in the exercise of the power of eminent domain for another public use, with this qualification, that a special grant cannot be construed to authorize subversion of the former use, unless such appears, by express words or by necessary implication, to be the legislative intent. As there is no statute in the state of South Dakota which authorizes the taking by one railroad of the right of way of another longitudinally, but the power granted is limited to the crossing or inter-

section of the right of way of another company and the uniting with its railroad, *the attempted condemnation proceedings of a portion of the right of way of the Milwaukee Company longitudinally cannot be sustained.*"

93 Pa. State, 159, *In re Pennsylvania Railroad's Appeal*:

This was a case in which the Pennsylvania Railroad attempted to take the property of a street railway in order to reach its depot. The Court said:

"Now the appellant admits that it has entered upon and for its own uses and purposes has destroyed part of the plaintiff's road, but it attempts to justify its action in that it was necessary for it so to do in order to reach its depot on Dock Street. But the question recurs—how came it that this warehouse was placed in such a position that it became necessary to enter upon and cross Dock Street in order to reach it? The answer is found in the testimony of Mr. Kneass, the assistant to the President of the Railroad Company. He says the whole block from Walnut to Dock Street and from Delaware Avenue to Water Street, excepting some stores fronting on Dock Street at the corner of Water Street, and at the corner of Delaware Avenue, was purchased for the use of a freight depot and the offices necessarily connected therewith. But we learn from the evidence of Mr. Trautwine, whose ability as an engineer no one doubts, that a practical entrance to this depot might be made either at the corner of Delaware Avenue, or at a short distance north of it. This, of course, would avoid any interference with the rights of the appellee. The appellant did not purchase or take as it might have done the property on the corner of Dock Street and Delaware Avenue and so was obliged to enter upon with its tracks and cross Dock Street in order to reach its warehouse. *The reason why this property was not purchased or taken is explained by the witness first above mentioned to have been that the necessities for that*

court below, and in view of the facts and circumstances surrounding this case we are of opinion: that the rulings of the lower court were eminently proper, in as much as the opinion of the lower court, reported in 163 Fed. 723, contains a full statement of the facts and deals with the various questions of law presented, we adopt the same as the opinion of this court. For the reasons stated, the decree of the lower court is affirmed."

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property were not imperative and the price therefor not satisfactory. He also says further on that the reason for not purchasing this property was one of economy merely. We thus discover that this necessity by which the unlawful acts of this company, appellant, are sought to be excused is one of its own making—**A MATTER OF ECONOMY.** It is cheaper to use Dock Street and the appellee's franchise than to buy the property above mentioned. **A DEFENSE MORE WEAK OR ONE MORE BARREN OF EQUITY COULD SCARCELY BE IMAGINED."**

"The appeal was dismissed."

The Court will note that this case is on all fours with the case at bar. Neville admits that the route A-B into Jackson would be more direct and his reason for **NOT** taking that route was economy.

134 Fed. 973, *Evansville & H. Traction Co. vs. Henderson Bridge Co.*

"While a public service corporation, like a railroad company, is bound to render to the public certain services appropriate to its particular functions, it is not bound to permit its property to be subjected to use by a rival corporation, unless by express statutory enactment and by due process of law thereunder."

193 Ill. 217 (61 N. E. 1090), *Suburban R. R. Co. vs. Metropolitan R. R. Co.:*

In this case, one street railway company was attempting to condemn a portion of the line of another street railway company. The court said, on page 1092:

"But one corporation cannot take the property of another already devoted to a particular use for the purpose of applying it to the same use. *Where there is no change in the use, there cannot be a change in the ownership under the law of eminent*

domain. C. & W. Ry. Co. vs. C. & E. Ry. Co., 112 Ill. 589. In this case, the proposed use is the same. It appears that petitioner desires to connect with another surface railroad at 52nd Street and it is doubtless desirable to run across this property for that purpose without deflecting from the direction of its original line. There is, however, no physical obstacle to its taking another route and reaching the surface without taking this 30-foot strip."

112 Ill. 589, *C. & W. Ry. Co. vs. C. & E. Ry. Co.:*

"In the absence of a clearly expressed intention to the contrary, the courts will not so construe a railway's charter as to authorize one company to take the property of another already devoted to a particular public use for the purpose of applying it to the same use. When there is no change in the use, it becomes a matter of mere private concern without at all affecting the public interest. This rule applies only when the taking would result simply in a change of ownership without affecting the use of the property sought to be taken."

214 Pa. 307 (63 Atl. 741) *Commonwealth, etc. Ry. vs.*

Bond:

(Syllabus 2):

"Where a street railway is granted permission to lay its tracks in a street, allowing a later corporation to lay a part of its tracks on the tracks of the first company, **IS AN UNCONSTITUTIONAL TAKING OF THE PROPERTY OF THE FIRST COMPANY.**"

(P. 742):

"This court has decided that while the Legislature may in the exercise of the right of eminent domain take franchises and property engaged in a public use and apply them to another public use, *a statute cannot be sustained which confers upon one corporation for profit a right to appropriate the property of another corporation to exactly the same public uses for the convenience and profit of*

*the younger corporation. P. & M. S. Ry. Co.'s Petition 203 Pa. 354 (54 Atl. 191). . . . The rule in these cases is based upon the principle that the granting of the use of the tracks of a former company to a later company was the taking of property of the former company for the convenience and profit of a younger corporation and **THEREFORE IS UNCONSTITUTIONAL.** The principle of these cases rule the case at bar. *To superimpose on the tracks of the former company the whole, or any part of the tracks of a later company, is the taking of property of the former company within the meaning of the rule in the cases just cited. There is no distinction in principle between the taking of the whole of the tracks of the former for the use of the later company and the taking of part of the tracks.*"*

203 Pa. 608 (53 Atl. 513) *Commonwealth et als. vs. Uwchlan St. Ry. Co.*

203 Pa. 354 (53 Atl. 191) *P. & M. St. Ry. Co.*:
(P. 192):

"The constitutionality of Section 14 with its amendment is denied. Can its constitutionality, under the settled law, be sustained? For whatever might be our opinion of the justice or wisdom of such legislation, we would not strike down an act of the legislature, a co-ordinate branch of the Government, who are as much bound to obey the fundamental law as we, unless the act palpably violates that instrument. We are in no doubt as to just what power the Legislature intended to confer by these acts. It was a clear grant of a right to the younger to enter upon the easement of the older company, and take possession of 2500 feet of its tracks, poles and wires, thereafter to use them for its corporate purposes. It is not material that this possession was not to be exclusive. *In whatever light it is viewed, it was an authority to appropriate to a certain extent the franchises and property of the older company.* In our earlier judicial history, it was sometimes

doubted whether the property of a corporation, used under its franchise for its own profit and the convenience of the public, could, under the right of eminent domain, be again appropriated by the State, or by a second corporation which had been granted the right of eminent domain; but it has long since been settled that all private property may be taken for public use; that all property not purely public is private, whether it belongs to an individual or a corporation, aggregate or sole; that while a corporation aggregate may be created for public purposes, and be granted rights and immunities only because it serves the public, yet, the purpose of the members is private profit to be realized by serving the public, and in that sense the franchise and property it acquires, whereby the individual profit accrues to each member of the corporation, are private property, and may be appropriated to another public use by the State. The substance of all the authorities (and they are many) is as stated by Chancellor Walworth, 3 Paige 73: 'Notwithstanding the grant to individuals, the eminent domain, the highest and most exact idea of property remains in the government, or in the aggregate body of the people in their sovereign capacities; and they have a right to resume the possession of the property in the manner directed by the Constitution and laws of the State whenever the public interest requires it.' But in addition to the power resting on the state's inherent right of sovereignty, Section 3, Article 16, of our Constitution, declares: 'The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals.'

"Therefore, the authority of the Legislature to confer on a corporation the right to take the franchise and property of an older corporation for public use cannot be questioned. Whether it be expedient or wise for the Legislature to exercise this authority to take property for public use is purely a political question, and one solely for the Legislature. But whether the use to which it

is sought to be appropriated, the property authorized to be taken is a public use is a judicial question, for the determination of the courts. *Bridge Co. vs. Dix*, 6 Howard 507; *City of Pittsburg vs. Scott*, 1 Pa. 309; *Jessup vs. Loucks*, 55 Pa. 350; *Appeal of Stewart*, 56 Pa. 413; *Appeal of P. N. & N. Y. R. R. Co.*, 120 Pa. 90; *Appeal of Edgewood R. R. Co.*, 79 Pa. 257; *Commission vs. Pa. Canal Co.*, 66 Pa. 41."

"In all these cases, the court decided whether the appropriation of the franchise of the older under the right of the eminent domain was a new and enlarged use for the benefit of the public and therefore such a 'public use' as brought it within the meaning of the Constitution. The first case cited (*Bridge Co. vs. Dix*), went to the Supreme Court of the United States on a writ of error to the Supreme Court of Vermont, the plaintiff in error averring that a statute of Vermont was in conflict with the Federal Constitution. The *Bridge Co.*, in 1795, had been invested by the Legislature with the exclusive privilege of building a bridge over West River within four miles of its mouth, with the right to collect tolls from those passing over it, the franchise to continue for one hundred years. The corporation, under its franchise, constructed its bridge and enjoyed its profit until the year 1839, when another act was passed, authorizing the State Courts, whenever in their judgment the public good so required, to take any real estate, easement or franchise of another turnpike or other corporation for the purposes of a public highway—to observe, however, the same rules in making compensation as provided by law in other cases where property was taken for public uses. Upon the petition of *Dix et als.*, proceedings were instituted for the construction of a public road or highway between certain terminals; the road passing upon and over the bridge, thus converting it into a free highway for all the public. Damages were assessed in favor of the *Bridge Company*, and paid into Court. The *Company* denied the right of the Legislature to appropriate its franchise and property on the ground that such appropriation impaired its contracts with the State

as implied by its charter, and therefore contravened the Constitution of the United States. The Vermont courts decided against the Company and their judgment was affirmed by the Federal Court. Three opinions were filed in the United States Supreme Court concurring in this judgment against the Bridge Company. It was held that the franchise and property of the company was subject to the right of eminent domain and could be taken for public use by the State without impairment of the contract relation with the State, **if the second use to which the property was devoted was another and more beneficial to the public than the old one;** that the use for which it was taken, although practically of the same kind as that made of the bridge before, was a public use, in that thereafter it became free to all the public, whereas before it was limited to those who could pay or were willing to pay tolls; that the use was enlarged and more beneficial to the general public when free from tolls. The case was ably argued by Mr. Webster for the plaintiff in error, and by Mr. Phelps, *contra*. The opinions by the three Justices, Daniel, Mclean and Woodbury, are very full and elaborate. Nearly all the questions raised are discussed, and the cases in the different states bearing on them cited. *It will be noticed from an examination of the report that counsel for the defendant in error concedes, and the court assumes, that the franchise could not have been taken from one corporation for profit under the right of eminent domain in the State and vested in another private corporation of the same kind for profit.* The public use is made to depend on the fact that thereafter it was to be free. It was, therefore, not a transfer of the franchise and property of one corporation for profit to another of like character, but a taking for purely public use. In the constitutions of nearly all the states, their bills of rights and eminent domain articles are substantially the same as ours. In all their courts, on questions such as the one before us (*Bridge Co. vs. Dix, supra*), has generally been cited and approved. It has been cited with approval in our own court in the cases already noted. *In re Towanda Bridge Co.*, 91 Pa. 216, is an exactly similar case in its

essential facts. It in effect decides that the growing necessities of a progressive age must be met by the exercise of the State's power of eminent domain. The public road appropriates the bridge path; the turnpike road, the public road; the electric railway, the turnpike road; the steam railroad, the canal bed. And so this court held so recently as *Harrisburg, C. & C. Turnpike Road Co. vs. Harrisburg & M. Elec. Ry. Co.*, 177 Pa. 585, 35 Atl. 850, 34 L. R. A. 600, where the railway company appropriated a small part of the road bed of the turnpike company under this same act of 1889; that the exercise of domain in that case was without doubt constitutional. The use was changed and greatly enlarged for the benefit of the public by the younger corporation. **BUT IN NO CASE HAVE I BEEN ABLE TO FIND IN ANY OF THE STATES A JUDICIAL JUDGMENT UPHOLDING THE RIGHT OF ONE CORPORATION, FOR PROFIT, TO APPROPRIATE THE PROPERTY OF ANOTHER TO EXACTLY THE SAME USES FOR THE CONVENIENCE AND PROFIT OF THE YOUNGER CORPORATION.**

* * *

"The same assumed power which gives the right to take property already appropriated under a grant can lawfully confer domain without restriction on property not so appropriated. In fact, there is no serious obstacle in the way of multiplying and constructing electric railways to meet every reasonable public demand for them. **IF THE NECESSARY COST OF CONSTRUCTION BE AN INSUPERABLE OBSTACLE**, unless property rights of like corporations be disregarded, **THEN THERE IS NOT THAT PUBLIC USE TO BE MET WHICH, WITHIN THE MEANING OF THE CONSTITUTION, WARRANTS THE GRANTING OF EMINENT DOMAIN.** A reasonable expectation of public patronage will always tempt investment of capital. If, however, under the law, the investment can be put in constant peril by the demands of a newer corporation for the property of the older, it may well be doubted whether, in the end, the public would not suffer from the refusal of capital to invest in improve-

ments for public use. Capitalists will take the risk that in the indefinite future their franchise and property may be taken to answer the public necessities and demands for a newer and more improved method of travel and communication. It is doubtful whether they would readily take the risk of the appropriation of their franchise and property by every organization instituted for precisely the same purpose under the general act of 1889; for there would then be no limit to the extent of the appropriation, except the cupidity of the new company and the will of the Legislature."

157 Mass. 364 (25 N. E. 92, 7 L. R. A. 765), *Cary Library vs. Bliss*:

Mary Cary died, giving to the Town of Lexington, certain money to be used in the acquisition of the "Cary Library". The library was acquired and operated and subsequently additional gifts were granted to it. Thereafter an attempt was made by the State to condemn it and take it over for a new library.

"1. Held that, by the acceptance of the terms of the gifts, the town and the trustees agreed to the scheme of management proposed by the donor; that these subsequent gifts were made with reference thereto; and that without the consent of all parties, in the absence of any necessity for a change of management, *the act was in violation of Const. U. S., Article 1, paragraph 10, providing that no State shall pass any 'law impairing the obligation of contract'.*"

"2. The statute further provided that the property, part of which consisted of money, should be taken, under the right of eminent domain 'to be held and applied in the same manner as if held by said trustees'. Held that, as there was no public necessity for the taking, **THE LEGISLATURE COULD NOT AUTHORIZE IT.**"

On page 96, the Court said:

"The question arises whether *taking property*

*from one party who holds it for a public use by another to hold it in the same manner for precisely the same public use can be authorized under the Constitution. Can such a taking be founded on a public necessity? It is unlike taking property for a public use which is already devoted to a different public use. There may be a necessity for that. In the first case, the property is already appropriated to a public use as completely in every particular as it is to be. Can the taking be found to be for the purpose which must exist to give it validity? In every case it is a judicial question whether the taking is of such a nature that it is or may be founded on a public necessity. If it is of that nature, it is for the Legislature to say whether in a particular case the necessity exists. We are of the opinion that the proceeding authorized by the statute was, in its nature, merely a transfer of property from one party to another, and not an appropriation of property to public use, nor a taking which was, or which could be found by the Legislature to be a matter of public necessity. *Bridge Co. vs. Dix*, 6 How. 507; *Lake Shore & M. S. R. R. Co. vs. C. & W. R. Co.*, 97 Ill. 506; *C. & N. W. R. R. Co. vs. C. & E. R. R. Co.*, 112 Ill. 589. **FOR THESE REASONS, THE MAJORITY OF THE COURT ARE OF THE OPINION THAT THE STATUTE OF 1888, c. 342, IS NOT IN CONFORMITY WITH THE CONSTITUTION OF THE UNITED STATES."***

77 Conn. 83 (58 Atl. 467) *Star Burying Ground Assn. vs. North Lane Cemetery Assn.*:

"A statute authorizing the condemnation of land will not be construed as applying to land already devoted to a public use, unless such application is clearly covered by the statute. . . . a condemnation of land actually appropriated to and fully serving a public use, for the same use by a different owner, may be a condemnation only in form, and in reality be a mere compulsory transfer of the property from one private owner to another, which it is beyond the power of the Legislature to provide for."

161 Mo. 288 (61 S. W. 684) *K. & T. C. Ry. Co. vs. N. W. C. & M. Co.*

Our opponents will undoubtedly contend that all of the law cited under this Section 1-B, and also the apprehension expressed in the petition and in this brief lest the Jackson & Eastern Railway Company can obtain by this condemnation proceeding the right to **"own, occupy and use"** a section of the main line track of the Alabama & Vicksburg Railway Company; and thereby sever the continuity of the Alabama & Vicksburg Railway Company's main line is without foundation or application, since the Supreme Court of Mississippi has held that the Jackson & Eastern's condemnation proceeding when properly construed does not seek to take more than an easement. We, however, point out that the Jackson & Eastern's condemnation petition which is quoted in the petition for certiorari, pages 7, 8 and 9, specifically says:

"That the following **real property**, rights, privileges and easements are sought to be condemned for the purposes hereinafter stated, to-wit: **A strip of land** of varying widths, extending, etc."

specifically describing the strip of land, and then continuing:

"Your applicant would further show that the public use for which the **strip of land**, rights, privileges and easements hereinabove described, is for a right of way for a switch track and the connection of said switch with the main line of the defendant, The Alabama & Vicksburg Railway Company, at the point above described; and your applicant further shows that it is necessary for it to **OWN, OCCUPY AND USE** said **STRIP OF LAND**, rights, privileges and easements above described in order to properly conduct its business

as a common carrier, for which purpose it was organized."

And the prayer of said condemnation proceeding reads:

"Wherefore, your applicant prays that such steps be taken for the condemnation of said **LANDS, rights, privileges and easement for the purposes aforesaid** as are required by Chapter 43, and Section 4096 of the Annotated Code of 1906 of Mississippi."

Petitioner further shows that Articles 1867 and 1868 of the Mississippi Code of 1906 read as follows:

"1867 (1692) JUDGMENT. Upon the return of the verdict, the Court shall enter a judgment as follows, viz.:

"In this case the claim of (naming him or them) to have condemned certain lands named in the application, to-wit: (here describe the property), being the property of (here name the owner) was submitted to a jury composed of (here insert their names) on the ____ day of _____, A. C. _____, and the jury returned a verdict fixing said defendant's compensation and damages at _____ dollars, and the verdict was received and entered. Now, upon payment of the said award, applicant can enter upon and take possession of the said property and appropriate it to public use as prayed for in the application. Let the applicant pay the costs for which execution may issue. J. P."

"1868 (1693) RIGHTS OF APPLICANT AFTER THE JUDGMENT. Upon the return of the verdict and entry of the judgment, if the applicant pay the defendant whose due compensation is fixed by it, or tender to him the amount so found and pay the costs, he or it shall have the right to enter in and upon and take possession of the property of such defendant so condemned, and to appropriate the same to the public use defined in the

application; and in case the defendant and his attorney absent themselves from the court, the payment may be made to the Clerk of the Circuit Court for him, and such officer shall be responsible on his bond therefor and shall be compelled to receive it."

and further points out that under the decision of the Supreme Court of Mississippi in this very case, 95 Sou. 733, the Supreme Court of Mississippi has said :

"In other words in this case, the court construed the statute of eminent domain and adjudicated that the only question that could be decided in that proceeding was the amount of damages.

"That the court could not decide the right of the plaintiff in such proceedings to institute the proceedings, nor could any question be raised than that of the amount of damages, and that the Circuit Court on appeal from the judgment of the eminent domain court had no greater right of jurisdiction than the eminent domain court had."

Under these circumstances, it seems apparent that as a result of the decision of the Supreme Court in dissolving petitioner's injunction and throwing it back defenseless into the eminent domain court, it has laid open to the Jackson & Eastern Railway Company a royal road specifically pointed out by Articles 1867 and 1868 of the Mississippi Code of 1906, whereby to invade petitioner's rights under the Fourteenth Amendment and the Commerce Clause of the Constitution of the United States. The Jackson & Eastern Railway Company with this injunction dissolved will now proceed with the condemnation proceeding in strict accordance with the Mississippi statutes above referred to, and having paid in the amount ordered by the J. P. Court and its jury, will cause to be entered a judgment exactly in the terms prescribed

by Article 1867 of the Mississippi Code of 1906. That judgment will describe the strip of land which constitutes a part of the main line of the road bed and track of the Alabama & Vicksburg Railway Company and will give to the Jackson & Eastern Railway Company the right to own, occupy and use said property. The Alabama & Vicksburg Railway Company will be precluded by the express language of the decision of the Supreme Court of Mississippi from making any objection to this procedure and the language which the Supreme Court of Mississippi has used in 101 Sou. 553, will be entirely impotent to save the Alabama & Vicksburg Railway Company from the disaster which will result. It is because of this situation that the jurisdiction and assistance of this court is invoked.

II.

"WHEN A STATE CONDEMNATION STATUTE PREVENTS A DEFENDANT IN CONDEMNATION FROM RAISING IN THE CONDEMNATION SUIT ANY ISSUE WHATEVER, SAVE AS TO THE AMOUNT OF COMPENSATION TO BE PAID, THE CONDEMNATION DEFENDANT IS DENIED DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAW GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, IF THE CONDEMNATION PETITION FAILED CLEARLY TO DECLARE THE PRECISE PROPERTY AND THE PRECISE INTEREST THEREIN SOUGHT TO BE CONDEMNED, SINCE IN THE ABSENCE OF SUCH FREEDOM FROM AMBIGUITY

**DEFENDANT CANNOT PROPERLY PREPARE AND
PRESENT ITS VERY LIMITED DEFENSE.**

The language of the condemnation proceeding has been copied in the petition for *certiorari* at pages 7, 8 and 9. It describes "a strip of land" and says:

" * * * and your applicant further shows that it is necessary for it to **OWN, OCCUPY AND USE said strip of land, rights, privileges and easements, above described**, in order properly to conduct its business as a common carrier, for which purpose it was organized."

The said condemnation proceeding concludes with a prayer reading as follows (R. of Miss. S. C. 29, 386) :

"WHEREFORE, your applicant prays that such steps be taken for the condemnation of said lands, rights, privileges and easements, for the purposes aforesaid, as are required by Chapter 43, and Section 4096 of the Annotated Code of 1906 of Mississippi.

"And as in duty bound, your applicant will ever pray."

The Chancellor who tried the case, in his opinion, said (R. p. 68) :

"It is the opinion of the Court that the eminent domain proceedings instituted by the defendant against the complainant seek to condemn greater right in the property of the A. & V. Railway Company than a mere easement for the purpose of making its junction and it is the opinion of the Court that the J. & E. Railway Company, defendant herein, is not entitled to acquire a dominant right of ownership in the property of com-

plainant under the law and the application should be amended to that extent."

Mr. Justice Anderson of the Supreme Court of Mississippi, in his dissenting opinion said (101 Sou. 556):

"The bill of the Alabama & Vicksburg Railway Company ought to have been sustained, in my judgment on another ground, and that is that the eminent domain application of the Jackson & Eastern Railway Company failed to sufficiently describe the right or easement it sought to condemn. It is unquestioned that the Jackson & Eastern Railway Company has no right under the statute to condemn the fee in the tracks and right-of way of the Alabama & Vicksburg Railway Company for the junction. Where a lesser interest than the fee in land is sought to be appropriated in a condemnation proceeding, the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest which is to be taken, and also with such certainty as to enable the jury to intelligently and according to law assess the compensation to be paid for the interest taken. *Pontiac Improvement Company vs. Board of Commissioners*, 104 Ohio State 447, 135 N. E. 635, 23 A. L. R. 866. Certainly the proceedings ought to be definite enough as to description of the right sought to be taken so that the owner of the fee will know how much he will have left after the proposed easement is taken. This is also necessary to enable the taxing authorities to properly assess the property. Unless what is taken by the condemnation proceedings is made definite how could the taxing authorities determine what assessment value to put on what was taken and what was left?

The Supreme Court of Mississippi said in this very case (95 Sou. 733):

"The court construed the Statute of Eminent Domain and adjudicated that the only question

that could be decided in that proceeding was the amount of damages. That the Court could not decide the right of the plaintiff in such proceedings to institute the proceedings, nor could any other question be raised than that of the amount of damages, and that the Circuit Court on Appeal from the judgment of the Eminent Domain Court had no greater right of jurisdiction than the Eminent Domain Court had."

From this it is apparent that unless the Supreme Court of Mississippi is reversed and that the condemnation proceeding is enjoined, petitioners will be deprived of their property without due process of law and denied the equal protection of the laws in contravention of the Constitution of the United States, particularly the Fourteenth Amendment. This is so, for the reason that unless the Supreme Court of Mississippi is reversed and petitioners' injunction is maintained, petitioners will be compelled to go before a jury of farmers with their hands tied so as to prevent their making any defense save on the question of amount of compensation and will have taken from them valuable property. **JUST WHAT PROPERTY WILL BE TAKEN IS THE SUBJECT OF A DIFFERENCE OF OPINION AMONG THE MISSISSIPPI JUDGES THEMSELVES.** This being so, **CERTAINLY THE JURY WILL NOT AND CANNOT KNOW JUST WHAT PROPERTY IS BEING TAKEN;** and petitioners, unless this fact is ascertained and made certain in advance, cannot make proper proof of their damages and cannot receive due process of law and the equal protection of the laws.

See *Pontiac Improvement Company vs. Board of Commissioners*, 135 N. E. 635 (23 A. L. R. 866); Ohio 1922:

“Where a lesser interest than a fee in real estate is sought to be appropriated in a condemnation proceeding by a municipality or board for public use, the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest which is to be taken and also with such certainty as will enable a jury in accordance with the Constitution to intelligently assess the compensation to be paid for the interest taken.’ For lack of such certainty the Ohio Court enjoined this condemnation proceeding.”

20 C. J. Par. 6: DESCRIPTION OF PROPERTY, AND LOCATION AND NATURE OF IMPROVEMENT.—(a) In General. The petition in condemnation proceedings must describe the property sought to be taken, defining the location and quantity required with such certainty that it may be identified, and the extent of the petitioner's claim made known to the owner, and a failure of the petition, complaint or application to thus describe the property, or any uncertainty in this respect, will vitiate the proceedings, unless an amendment of the description is allowed.”

III.

UNTIL A RAILROAD HAS OBTAINED A CERTIFICATE OF PUBLIC NECESSITY FROM THE INTERSTATE COMMERCE COMMISSION, IT CANNOT BUILD A NEW LINE OR CONNECT WITH AN ESTABLISHED LINE. NOR CAN IT AFTER OBTAINING SUCH A CERTIFICATE, DEVIATE FROM THE ROUTE THEREIN INDICATED WHEN BUILDING THE NEW LINE. NOR CAN IT RESORT TO STATE AGENCIES TO FORCE A JUNCTION WITH ANOTHER RAILROAD AT A POINT NOT ON THE ROUTE NAMED IN THE CERTIFICATE OF PUBLIC

**NECESSITY WITHOUT VIOLATING THE OTHER
RAILROAD'S RIGHTS, PRIVILEGES AND IMMUNI-
TIES UNDER THE INTERSTATE COMMERCE ACT
AS AMENDED BY THE TRANSPORTATION ACT OF
1920.**

The Court will recall that Art. 18, Sec. 1 of the Interstate Commerce Act provides:

"No carrier by railroad subject to this Act, shall undertake the extension of its line of railroad, or the construction of a new line of railroad, shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over and by means of such additional or extended line of railroad unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction and operation of such additional or extended line of railroad."

The Jackson & Eastern Railway Company recognized in this instance the authority of this Section and sought and obtained from the Interstate Commerce Commission a certificate which is in the record as Respondent's Exhibit II and which shows that the line authorized by the Interstate Commerce Commission was to be built **FROM SEBASTOPOL, MISSISSIPPI, TO JACKSON, MISSISSIPPI, NOT TO CURAN'S CROSSING**, and said record shows conclusively that Curan's Crossing is not an intermediate point on the line between Sebastopol and Jackson, Mississippi. See 298 Fed. 488, *Lancaster vs. G. C. & S. F. R. R.*, where the Court stressed the necessity of obtaining consent from the Interstate Commerce

Commission prior to the construction of a new line of railroad between any two points.

However, President Neville contended below, that because he filed a map with his application to the Interstate Commerce Commission which he says shows he intended to go to Curan's Crossing and thence by the A. & V. Ry. Co. rails to Jackson, Mississippi, the Interstate Commerce Commission when it issued the order authorizing him to build from Sebastopol, Mississippi, to **JACKSON, MISSISSIPPI**, thereby authorized him to build from Sebastopol, Mississippi, to Curan's Crossing and thence, to use the A. & V. line to Jackson, Mississippi. The plain and complete answer to this is that after filing his petition and map, President Neville filed a second petition with the Interstate Commerce Commission, which is to be found in the Record at page 103, in which second petition the Jackson & Eastern Railway Company asked leave to use the Alabama & Vicksburg Railway Company's line from Curan's Crossing into Jackson, Mississippi.

On receipt of this second petition, the Interstate Commerce Commission wrote to President Neville the letter, Exhibit 1, page 940, in which they said that they could not give him that right, thus conclusively demonstrating that both President Neville and the Interstate Commerce Commission construed the certificate of public necessity theretofore issued by the Interstate Commerce Commission as meaning what it said, namely, that the Jackson & Eastern Railway Company was authorized to build from Sebastopol, Mississippi, to Jackson, Mississippi, **but was not authorized** to build from Sebastopol to Curan's Crossing, Mississippi, and to

use thence the A. & V. Railway line to Jackson, Mississippi. The direct line between Sebastopol and Jackson, Mississippi, is considerably to the north of Curan's Crossing and by using that direct route the Jackson & Eastern Railway Company would reduce its distance into Jackson, Mississippi, by a mile and a half or more. This affirmatively appears from the record. See Map Exhibit B to Duffy's testimony, where the direct line has been drawn between the points (a)-(b) and the Map Exhibit A to Duffy's testimony, where the direct line has been drawn between the points (1)-(2) to Duffy's testimony. See also the testimony of Mr. Hayden, Vol. III, p. 671, and Mr. E. Ford, Vol. III, p. 696, and Mr. E. M. Durham, Vol. IV, p. 789, and Mr. Duffy, Vol. II, p. 460.

This testimony makes it plain that if the Jackson & Eastern Railway Company wishes to go direct to Jackson, Mississippi, as authorized in the Order of the Interstate Commerce Commission, its best route would be the route along the line (1)-(2) marked out by Hayden on Exhibit A of Duffy's testimony. If it wishes to go to a connection with the Alabama & Vicksburg Railway Company then its best route is to utilize the route actually surveyed under directions of Mr. E. M. Durham, Jr., which route, Mr. Durham has sworn, would be a cheaper one to build and a cheaper one to maintain for the Jackson & Eastern Ry. Co. In neither case is it proper or necessary to incur the hazards and difficulties of **CURAN'S CROSSING.**

This record shows without contradiction that when the Jackson & Eastern Railway Company filed its application with the Interstate Commerce Commission for a

certificate of public necessity for a line from Sebastopol, Mississippi, to Jackson, Mississippi, the Alabama & Vicksburg Railway Company made no appearance and it opposed no objection because it did not think that it was interested. Had the Jackson & Eastern Railway Company, at that time, applied for a certificate of public necessity from Sebastopol, Mississippi, to Curan's Crossing, Mississippi, the ALABAMA & VICKSBURG RAILWAY COMPANY would have been entitled to notice and would have been entitled to be heard before the Interstate Commerce Commission in opposition to the issuance of such a certificate and it would certainly have availed itself of that opportunity and would have opposed the issuance of the certificate. If now, the Jackson & Eastern Railway Company is allowed under the aegis of a certificate of public necessity authorizing it to build from Sebastopol, Mississippi, to Jackson, Mississippi, to utilize a State condemnation court for the purpose of building a line from Sebastopol, Mississippi, to Curan's Crossing, Mississippi, the ALABAMA & VICKSBURG RAILWAY COMPANY has been deprived of its opportunity to be heard before the Interstate Commerce Commission in opposition to such a project. The vindication of this right, privilege and immunity which it has under the Interstate Commerce Act, as amended by the Transportation Act of 1920, is what the ALABAMA & VICKSBURG RAILWAY COMPANY is seeking from this Court, in this proceeding.

For these reasons, it is respectfully submitted that the prayer of the Alabama & Vicksburg Railway Company's petition for *certiorari* should be granted and the

decision of the Supreme Court of Mississippi in this case should be reviewed by this tribunal.

Respectfully submitted,

R. H. THOMPSON,
A. S. BOZEMAN,
S. L. McLAURIN,
MONTE M. LEMANN,
J. BLANC MONROE,
Counsel for Petitioners.

February, 1925.



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WM. R. STANSBURY
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No. 244.

IN THE
United States Supreme Court
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WRIT OF ERROR AND CERTIORARI TO SUPREME
COURT OF THE STATE OF MISSISSIPPI.
MISSISSIPPI.

THE ALABAMA & VICKSBURG RAILWAY COM-
PANY, ET AL.,

Plaintiffs in Error and Petitioners,

versus

JACKSON & EASTERN RAILWAY COMPANY,
Defendant in Error and Respondent.

ORIGINAL BRIEF ON BEHALF OF PLAINTIFFS IN
ERROR AND PETITIONERS.

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A. S. BOZEMAN,
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N. B.

MR. NEVILLE, the defendant's president, testified, p. 499:

"Q. Do you know, Mr. Neville, of any instance that you can name to me in which there has been established a junction between two railroads at a point which was on the outside of a curve, on a 10-foot fill, between two 400-foot trestles, in the immediate vicinity of a highway crossing, and in the flood reach of an unruly river?

"A. I don't know as there is such a one anywhere else in the world."

MR. DURHAM, chief engineer U. S. Railroad Administration, testified, p. 616:

"In my opinion it would be difficult to find a worse location for this junction between Pearson and Pearl River."

MR. WOODS, chief engineer So. Ry. lines west, testified:

P. 204. "It is decidedly undesirable."

P. 214. "In that case I see no excuse whatever for such a connection as this."

MR. EVANS, general chairman R. R. Conductors, swore, p. 110:

"My opinion is that it is a death trap for the men employed to do the work there."



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(8) Issue No. 3:

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(9) Issue No. 4:

The Interstate Commerce Act expressly provides that before building a railroad its promoters must obtain after hearing a certificate of public necessity for such construction from the Interstate Commerce Commission. In the present instance the certificate covered a road from Sebastopol to Jackson, but the proposed construction in aid of which the condemnation is sought is from Sebastopol to a point different from Jackson, known as Curan's Crossing. Such procedure by a state justice of peace court ousts the jurisdiction of the Interstate Commerce Commission and denies to the A. & V. Ry. Co. its right to be heard before that Commission in opposition to the change in route

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(10) **Issue No. 5:**

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ORIGINAL BRIEF ON BEHALF OF PLAINTIFFS IN
ERROR AND PETITIONERS.

If the Court Please:

This case has been brought here by the ALABAMA & VICKSBURG RAILWAY COMPANY, the trustees under its mortgages and its appeal bondsmen, to review two decisions of the Supreme Court of Mississippi: (95 Southern 733, R. P. 28, and 101 Southern 553, R. P. 677), dissolving an injunction sued out by them, whereby the JACKSON & EASTERN RAILWAY COMPANY

was restrained from proceeding to condemn certain property of the A&V Railway Company in a justice of the peace court, under a Mississippi statute which allows a defendant in such a proceeding to raise only one question, namely, the question of the amount to be paid to the defendant.

It is here, both on writ of error (R. p. 698) and by certiorari (see petition, notice, brief, etc.).

SUMMARY OF FACTS.

(1) The controversy arose out of an attempt of the Jackson & Eastern Ry. Co. to condemn in a justice of the peace court in Mississippi what the A&V Railway Company contends is the A&V Railway Company's main line track, for the purpose of making a connection with the A&V Railway Co. at a point which in the opinion of two of the most eminent and disinterested engineers of the country (Mr. E. M. Durham, Jr., E. p. 400, chief engineer U. S. Railroad Administration; and Mr. A. A. Woods, R. p. 201, chief engineer Southern Railway Co.), is entirely improper as a location for a junction.

The proposed location has been unanimously and vehemently objected to by the trainmen of the A&V Railway Co. whose duties will compel them to risk their lives in operating over it (R. p. 109-110-129-130-596) **AS A DEATH TRAP** and not a single Jackson & Eastern Ry. Co. trainman who will handle trains over the junction has taken the stand to deny this.

The proposed location has been shown to be:

1. On a curve, hence dangerous.

2. On an eight-foot fill, hence more dangerous.

3. Adjacent to an already dangerous road crossing, at grade, hence still more dangerous.

4. Between two 400-foot trestles, which the trains must hang over while stopping at the proposed junction.

5. In the flood area of Pearl River, hence continuously threatening both roads with a washout.

(2) It has been shown, without contradiction, that there is an entirely safe and proper place for a junction less than three miles from this highly objectionable proposed junction point. Mr. Durham has testified without contradiction that this safe junction will be cheaper to build and cheaper to maintain (R. p. 403), and the A&V Ry. Co. has expressed its willingness to co-operate in making the junction at this safe place.

(3) The record shows that the reason that the J&E Railway Co. was unwilling to use this safe junction point but sought through the intervention of the justice of the peace court, (where the hands of the A&V Railway Co. would be tied) to secure this unsafe and dangerous junction point, was as follows:

a. The location engineer of the J&E Railway Co., Mr. Stacker, testified (R. p. 331):

"Q. Had you in mind in coming to this point nothing in regard to the bridge of Pearl River?

"A. The bridge of the A&V Railway Co.?

"Q. Was that considered by anybody?

"A. The consideration was that we would be enabled to make arrangements with the A&V Railway and cross the river by the A&V bridge.

"Q. And did that consideration weigh with you in locating the proposed junction point?

"A. We wanted a junction with the A&V Railway so that we could use the A&V Railway track and bridge, a portion of the track west of the river, until we could enter Commerce street."

Such a user could, of course, only be obtained, if at all, through the Interstate Commerce Commission.

b. The President of the J&E Railway Co., Mr. Neville, virtually admitted: (R. p. 505, 470 and 507);

That in seeking this dangerous and improper junction point, he had in mind not the merits of the junction point, but the following ulterior motives:

(I) Persuading the Interstate Commerce Commission to permit the J&E Railway Company to use the main line track of and the terminal facilities of the A&V Railway Company.

(II) Thereby to make the Interstate Commerce Commission more inclined to recognize the J&E Railway Co. as a link in a system of consolidated connecting carriers.

(III) Thereby to secure an order from the Interstate Commerce Commission forcing the A&V Railway Co. to handle J&E Railway business into and out of Jackson, Miss., on a switching charge.

(4) Having all this in mind, the J&E Railway sought to condemn a portion of the A&V Railway Company's main line by a proceeding before a Justice of the Peace, knowing that the Supreme Court of Mississippi had held that the defendant in such a proceeding could

raise only one issue, namely, the question of the amount of the damages to be paid to the defendant.

In its opinion in this very case, the Supreme Court of the State of Mississippi has said, (R. p. 35), dealing with its own previous decision in *Vinegar Bend Lumber Co. vs. Oak Grove R. R. Co.*, 89 Miss. 84, 43 Sou. 292:

"In other words, in this case, the court construed the Statute of Eminent Domain and adjudicated that the only question that could be decided in that proceeding was the amount of damages; that the Court could not decide the right of the plaintiff in such proceedings to institute the proceedings, nor could any other question be raised than that of the amount of damages, and that the Circuit Court on Appeal from the judgment of the Eminent Domain Court, had no greater right of jurisdiction than the Eminent Domain Court."

(5) In seeking this point of junction, the J&E Railway Co. disregarded the fact that its certificate of Public Necessity (R. p. 563) did not authorize it to build from Sebastopol its point of origin to Curan's Crossing but obligated it to build from Sebastopol to Jackson, Miss. That certificate of Public Necessity reads in part as follows:

"It is hereby certified that the present and future public convenience and necessity require or will require the construction of an extension of the line of the J&E Railway from Sebastopol to Jackson, etc."

(6) In seeking this point of junction, the Jackson & Eastern has appealed to local prejudice and sympathy by boldly stating that it will build the road in the way

it wishes it built, or will refuse to build it at all. Its attitude towards the community in which the line is proposed to be built is "Let me build this line in my own way, at whatever cost or expense or danger to the A&V Railway Company, its property and its operatives or I will not build it at all." And the community has wanted the Railroad built.

On this foundation, this case comes to this Court, on the following issues raised by the eleven assignments of error, (R. p. 694 *et seq.*) and the points raised in the petition of certiorari.

SUMMARY OF ISSUES.

I.

The Interstate Commerce Act as amended by the Transportation Act 1920, especially section 3, paragraphs 3 and 4, and Section 5, dealing with consolidations vest in the Interstate Commerce Commission exclusive jurisdiction of track connections between interstate carriers. No state tribunal may order such connections or fix the relative rights of interstate carriers thereat.

II.

When a State condemnation Statute prevents a defendant in condemnation from raising in the condemnation suit any issue whatsoever, save as to the amount to be paid, the condemnation defendant is denied due process of law and the equal protection of the law guaranteed by the Fourteenth Amendment, if the petition for condemnation fails to declare clearly the precise property and the precise interest therein sought to be con-

demned, since in the absence of such freedom from ambiguity, the defendant cannot properly prepare and present its limited defense.

This point is strikingly illustrated in the case at bar, since the Mississippi Judges have themselves been unable to agree as to what property the plaintiff in condemnation was seeking to acquire.

III.

No tribunal State or Federal can transfer any essential section of the main line track of one interstate carrier to another interstate carrier for a like purpose without violation of the Fourteenth Amendment and the Contract Clause of the Constitution of the United States.

IV.

Until a railroad has obtained a certificate of public necessity from the Interstate Commerce Commission in accordance with the requirements of the Federal Interstate Commerce Act, it cannot build a new line or connection with an established line, nor can it, after obtaining such a certificate deviate from the route therein indicated in building the new line; nor can it resort to state agencies to force a junction with another railroad, at a point not on the route named in the certificate of Public Necessity without violating that other railroad's rights, privileges and immunities, under the Constitution of the United States and under the Interstate Commerce Act as amended by the Transportation Act 1920.

V.

Certainly no state agency has the right to impose upon an important interstate carrier a condition which will make it dangerous to the life and limb of its employees and its passengers for it to operate its trains. The attempt to impose such a condition upon it is a violation of its rights under the Federal Constitution particularly the Commerce Clause and the Contract Clause and under the Interstate Commerce Act as amended by the Transportation Act 1920.

VI.

The provisions of the Constitution and Statutes of the State of Mississippi to the extent that they have been held by the Supreme Court of Mississippi to authorize the doing of these things, are unconstitutional as being violative of the Federal Constitution, particularly the Commerce Clause, Art. I, Section 8, Par. 3; the Contract Clause, Art. I, Section 10, Par. 1; the Fourteenth Amendment and the Federal Interstate Commerce Act as amended by the Federal Transportation Act 1920.

DETAILED STATEMENT OF FACTS.

The Alabama & Vicksburg Railway Company is a standard Class 1 Railroad, owning and operating a standard line of railroad whereon it is engaged continuously in the transportation of interstate and intrastate passengers, freight, express and mail. It being one of the old, well-established and important carriers in the southeast of the United States. R. p. 92.

The Jackson & Eastern Railway Company is a

comparatively new, unimportant and small railroad company incorporated in 1915, for the purpose of owning and operating a railroad from Union, Mississippi, to Jackson, Mississippi, a large part of which prospective line is still unbuilt. The Jackson & Eastern Railway Company is also engaged in interstate and intrastate commerce. (R. p. 538.)

A&V RAILWAY CO.'S MAIN LINE SOUGHT TO BE TAKEN;

ITS CONTINUITY DESTROYED.

In February, 1922, when the line of the J&E Ry. Co. had been constructed only from Union, Mississippi, to Sebastopol, Mississippi, a town about forty miles from a point on the A&V Ry. Co.'s railroad called Curan's Crossing, the J&E Ry. Co. filed a petition seeking by hearing in a justice of peace court to condemn property of the A&V at Curan's Crossing, described in the said petition as follows (R. p. 607) :

"3. That the following **REAL PROPERTY**, rights, privileges and easements are sought to be condemned, for the purposes hereinafter, stated, to-wit: **A STRIP OF LAND OF VARYING WIDTHS**, extending from Station 0/00 on the enumeration of the applicant, the Jackson & Eastern Railway Company, which 0/00 station is located on the center line of the Alabama & Vicksburg Railway Company's track 1797 feet east from the first block signal semaphore east of the Alabama & Vicksburg Railway Company's bridge over Pearl River in an easterly direction along the surveyed line of the Jackson & Eastern Railway Company an average distance of 325 feet, the widths of said strip to

be condemned are: At Station 0/00, 16 feet, being 8 feet on each side of the center line; at Station 0/50, 21 feet, being 8 feet on the right and 13 feet on the left side of the center line of the Jackson & Eastern Railway Company's survey; at Station 1/00, 26 feet, being 8 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 1/50, 27 feet wide, being 9 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2/00, 30 feet wide, being 11 feet on the right and 19 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2/50, 35 feet wide, being 15 feet on the right and 20 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3/00, 30 feet wide, being 20 feet on the right and 10 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3/25, 20 feet wide, being all on the right of the center line of the Jackson & Eastern Railway Company's survey; and at Station 3/75 coming to a point on the north right of way line of the Alabama & Vicksburg Railway Company's said survey, **CONTAINING TWO HUNDRED AND THIRTY TWO THOUSANDTHS (.232) ACRES**, and lies in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 14, Township 5 North, Range East, Rankin County, Mississippi, which said center line of the proposed track of the appellant, the Jackson & Eastern Railway Company, is more fully shown by a diagram hereto attached, marked Exhibit "A", and made a part hereof. R. of Miss. S. C. 28, 385.)

"4. Your applicant would further show that the public use for which the strip of land, rights,

X / privileges and easements hereinabove described, is for a right of way for a switch track and the connection of said switch with the main line of the defendant, the Alabama & Vicksburg Railway Company at the point above described; and your applicant further shows that it is necessary for it to OWN, OCCUPY AND USE SAID STRIP OF LAND, rights, privileges and easements above described, in order properly to conduct its business as a common carrier, for which purpose it was organized." ✓✓✓

The said condemnation petition concludes with a prayer reading as follows, R. p. 610:

"Wherefore, your applicant prays that such steps be taken for the condemnation of said LANDS, rights, privileges and easements, for the purposes aforesaid, as are required by Chapter 43, and Section 4096 of the Annotated Code of 1906 of Mississippi. ✓

"And as in duty bound your applicant will ever pray."

Bold-face type by present writer in above quotations.

THE LAND THUS SOUGHT TO BE CONDEMNED CONSTITUTES A SECTION OF THE A&V RAILWAY COMPANY'S MAIN LINE TRACK, and if the Jackson & Eastern Railway Company acquires the right to "OWN, OCCUPY AND USE THE SAID STRIP OF LAND," the continuity of the A&V Railway Company's railroad will be destroyed and instead of one continuous line of road from Meridian, Mississippi, to Vicksburg, Mississippi, will own two disconnected pieces of track separated by land of the

Jackson & Eastern Railway Company. The land described in the condemnation petition was by the J&E Railway's own engineers at the request of petitioner's counsel, cross hatched on a blue print of petitioner's main line as per Exhibit "A" attached, as page 9 to the petition for certiorari herein where it appears as a wedge-shaped area bisecting petitioner's "main line to Meridian, Mississippi", and actually embracing the embankment, ties and rails of petitioner's said main line. See L. W. Duffy's testimony (R. p. 283).

PROPOSED JUNCTION DANGEROUS.

The proposed location has been shown to be entirely improper as a point of connection between the Alabama & Vicksburg Railway Company and the Jackson & Eastern Railway Company in that:

A. **On a curve.** At the proposed point of connection the two railroads would approach each other on opposing curves.

(a) Thereby impeding the views of the junction of the crews of the trains approaching it on each line, thus increasing the chances of accident.

(b) Thereby making it necessary either not to elevate the outside rails of the tracks, a safety measure usually adopted on railroad curves, or else to have said tracks approach each other in opposing planes, in either case increasing the danger of accident.

(c) Thereby making it necessary to cut for a switch connection, the outer rail of a curve, thereby entailing danger of derailment by a switch splitting since centrifugal force would press the car wheel flanges closely against the outside rail and

tend to cause them to catch in and split the switch inserted therein. Durham (p. 616); Woods (p. 203); Stamm (p. 145); Jones (p. 86); Ford (p. 374).

(B) ON A FILL.

At the proposed point of connection, the two railroads would each be on a 10-foot embankment, thus materially increasing the danger, difficulty and expense of installing, maintaining and operating the proposed connection. Durham (p. 616); Woods (p. 203); Stamm (p. 14); Jones (p. 88); Ford (p. 375).

(C) AT A HIGHWAY CROSSING.

The proposed point of connection would be immediately adjacent to and would materially increase the hazard at an already dangerous and much-used highway crossing at grade over the Alabama & Vicksburg Railway Company's tracks. Durham (p. 616); Woods (p. 204); Stamm (p. 144); Jones (p. 91); Ford (p. 374).

(D) BETWEEN TWO TRESTLES.

The point of connection would be between two trestles in the track of the Alabama & Vicksburg Railway Company, each about 400 feet in length and so close together that an Alabama & Vicksburg Railway Company train stopping with its locomotive at the proposed connection, would necessarily extend over one or the other of these trestles, thus endangering and obstructing its operatives in the handling of the trains and any passengers entering or alighting therefrom. Durham p. 618, 619; Woods (p. 203), Stamm (p. 145), Jones (p. 89), Ford (p. 374).

(E) IN THE FLOOD AREA.

The proposed point of connection would be in the flood area of the valley of Pearl River and the building by the Jackson & Eastern Railway Company of an embankment and line at that point would necessarily concentrate the flood waters of Pearl River on already exposed points of the Alabama & Vicksburg Railway Company's tracks, thus increasing the height of the flood against already exposed portions of the Alabama & Vicksburg Railway Company's embankment and increasing the danger of washout of that embankment by Pearl River. Durham (p. 617), Woods (p. 203), Stamm (p. 146), Jones (p. 90), Ford (p. 378).

The force and validity of these objections was testified to by disinterested witnesses of national prominence in railroad matters including Mr. E. M. Durham, (R. p. 615), formerly chief of the Engineering Department of the U. S. Railroad Administration, and Mr. A. A. Woods, (R. p. 241), Chief Engineer of lines west of the Southern Railway Company. The defendant's own witnesses admitted that it would be preferable to have a junction where there was no curve, no fill, no public road crossing, no trestles or no high water. See Neville, p. 495; Duffee, p. 265; Stacker, pp. 307, 308, 309; and admitted that these disadvantages were present at the proposed junction; Duffee, p. 254. Mr. Neville, president of the J. & E., testified, p. 499:

"Q. Do you know, Mr. Neville, of any instance that you can name to me in which there has been established a junction between two railroads at a point which was on the outside of a curve, on a 10-foot fill, between two 400-foot trestles, in

the immediate vicinity of a highway crossing, and in the flood reach of an unruly river?

"A. I DO NOT KNOW AS THERE IS SUCH A ONE ANYWHERE ELSE IN THE WORLD."

Mr. E. M. Durham presented an actual survey showing that the J&E Ry. Co. could come to a junction with the A&V Ry. Co. at a point distant less than three miles from the proposed junction, which point would be free of all of the objectionable features present at the point of junction proposed by the Jackson & Eastern Railway Company. This survey showed and Durham (R. p. 402, 403) testified that the route of the J&E Ry. Co. to the safer junction would be **ACTUALLY CHEAPER** for the Jackson & Eastern Railway Company **TO BUILD** and **CHEAPER FOR IT TO MAINTAIN**. Defendant's witnesses made no attempt to contradict this.

DETAILED STATEMENT AND ARGUMENT OF ISSUES.

ISSUE NO. 1.

THE INTERSTATE COMMERCE ACT, AS AMENDED BY THE TRANSPORTATION ACT 1920, ESPECIALLY SECTION 3, PARAGRAPHS 3 AND 4, VESTS IN THE INTERSTATE COMMERCE COMMISSION EXCLUSIVE JURISDICTION OF TRACK CONNECTIONS BETWEEN INTERSTATE CARRIERS NO STATE TRIBUNAL MAY ORDER SUCH CONNECTIONS OR FIX THE RELATIVE RIGHTS OF CARRIERS THEREAT.

Plaintiffs in error and petitioners in their pleadings and assignments set up:

- a. That both plaintiff and the defendant were engaged in interstate commerce.

b. That the Federal Interstate Commerce Act, Sec. 3, Paragraphs 3 and 4, as amended by the Transportation Act of 1920, vested in the Interstate Commerce Commission the exclusive right to compel connections and the use of terminal facilities and other property by and between railroads engaged in interstate commerce; and that this exclusive power in the Interstate Commerce Commission necessarily precluded any State, or any tribunal or agency thereof from exercising such power.

c. That to allow defendant to proceed with its condemnation proceedings in the State tribunal was an interference with and denial to petitioner of its rights, privilege or immunity under said Federal Statutes, and under the Commerce Clause, the Contract Clause and the 14th Amendment of the U. S. Constitution.

d. That the provisions of the Constitution and Statutes of the State of Mississippi to the extent that they have been held by the Supreme Court of Mississippi to authorize the making of a track connection between two interstate carriers, either with or without the ultimate purpose of securing advantages only allowable by the Interstate Commerce Commission are illegal, null and void, as in contravention of the Federal Constitution, particularly the Commerce Clause, Art. I, Sec. 8, p. 3; the Contract Clause, Art. I, Sec. 10, p. 1; the Fourteenth Amendment and the Interstate Commerce Act as amended by the Transportation Act 1920.

Said rights, privileges or immunities claimed by petitioner under said Federal Constitution and Statutes were denied to it by the State Court and the validity of the Statutes assailed was maintained. The error of that

denial is aggravated and the fact that the Interstate Commerce Commission's exclusive jurisdiction should have been recognized is accentuated by the fact that the case presented is a case in which:

a. Two interstate carriers have disagreed as to the location of a junction point whereat there is to be afforded reasonable, proper and equal facilities for the interchange of traffic between their respective lines.

b. Two interstate carriers have disagreed as to the rights in or to the first carrier's property, which the second carrier can acquire at such junction.

These are two questions which the Interstate Commerce Commission under the Interstate Commerce Act as amended particularly Section 3, paragraphs 3 and 4, is specially vested with authority to determine.

c. The carrier seeking the condemnation frankly admits that its reason for seeking to condemn the property in question, was that it hoped thereby to secure (1) the right to use the costly bridge and main line track into Jackson, Mississippi, of the defendant in these proceedings (2) the right to get from the Interstate Commerce Commission an order directing the A&V Railway Company to handle its Jackson business on a switch movement and switching charge; (3) the right to be considered by the Interstate Commerce Commission as a link in a system of consolidated carriers.

These three rights could be given it, if at all, only by the Interstate Commerce Commission under the Interstate Commerce Act as amended by the Transportation Act of 1920.

- (1) The testimony making these admissions is in part as follows:

Mr. Stacker, the locating Engineer of the J&E Railway Company, testifies (R. p. 331):

"Q. Mr. Stacker, Mr. Duffee testified that they started out to run a line of railroad from Sebastopol to Jackson. Why didn't you run your road to Jackson?

"A. Well, we run the line very close to Jackson. We considered that we would be practically at Jackson. We are going towards Jackson.

"Q. Had you in mind in coming to this point anything in regard to the bridge of Pearl River?

"A. The bridge of the A&V?

"Q. Was that considered by anybody?

"A. The consideration was that we would be enabled to make arrangements with the A&V and cross the river by the A&V bridge.

"Q. And did that consideration weigh with you in locating the proposed junction point?

"A. *We wanted a junction with the A&V, so we could use the A&V track and bridge, a portion of the track West of the river until we could enter Commerce Street.*"

- (2) Mr. Neville, the president of the J&E Railway Company, testifies (R. p. 505):

"Q. And if I understand you, your desire to go to Curan's Crossing for a junction is predicated on the thought that if you get there you will be able to get a switch movement over the A&V?

"A. I know it.

"Q. From whom will you get this switch movement?

"A. From the authorities that control both

the A&V and the J&E, the Interstate Commerce Commission.

"Q. If you are unable to get the Interstate Commerce Commission to grant you a switching movement out of Curan's Crossing the main defense, from your point of view, between Curan's Crossing as a junction and the junction point suggested by the A&V will be eliminated?

"A. Absolutely, as a defense only.

"Q. What do you mean?

"A. I mean that any line, that under the present law policy governing *the consolidation and building of carriers*, to make the line a permanent success it must go into Jackson to make connections with other lines.

"Q. It must go into Jackson, how, on its own rails?

"A. No, sir.

"Q. How?

"A. Either go in on its own rails or the joint rails of other carriers.

"Q. What other carriers?

"A. The A&V."

(3) Mr. Neville further testifies (R. p. 470):

"Q. Now, going back to the proposition that you are testifying about, after the timber was removed, the railroad would have to be abandoned, why would you have to abandon the road?

"A. Simply because the road could not be utilized in the scheme of consolidation of the Interstate Commerce Commission and the Act of Congress at this time. It is not in line with the scheme of connection of railroads. If this junction was made at Pearson, I could not perfect any

arrangements with any road running North or South, couldn't join."

R. p. 501:

"Q. You stated yesterday that in order to live a short line road such as you had contemplated building would have to form a connecting link between other lines. What other lines have you in mind as a connecting line between them?

"A. The G&SI and the NOGN.

"Q. The NOGN has terminal facilities at Jackson?

"A. Yes, sir."

ALL OF THESE THREE QUESTIONS, NAMELY

(1) The use of the main line track and terminal facilities of the A. & V. Ry. Co.; (2) The acceptableness *vel non* of the proposed J. & E. Ry. Co. to the Interstate Commerce Commission as a link in a system of consolidated connecting carriers; and (3) The forcing of the A. & V. by the Interstate Commerce Commission to handle through business into Jackson on a switching charge, **ARE MATTERS PECULIARLY AND ADMITTEDLY WITHIN THE JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION**, and if the proper place for the location of this junction is to be determined because of its bearing upon these three issues, it would appear not only logical, but essential, that the Interstate Commerce Commission should have and retain jurisdiction to locate the point of junction. The J. & E. is asking that this junction be placed at a point considered by eminent engineers and by all the trainmen who must pass over it to be improper and dangerous, because **IT SAYS** that it is the point which the Interstate Commerce Commission would consider most desirable in granting it the four

items of advantage listed. Its statement to that effect is unsupported and is contradicted but is its sole reason for demanding this improper junction. We point out that if the propriety of the point of junction is to be determined because of its bearing on the future action by the Interstate Commerce Commission, *then the junction point should be determined by that body*. It should not have its hand forced by what amounts to an *ex parte* proceeding before a justice of the peace.

The matter apparently appealed to President Neville, himself, in that way, as appears from his letter to President Jones of October 26, 1921, in which he says in part (R. p. 83):

"In view of your position, there is nothing further for us to do **EXCEPT TO SUBMIT THE MATTER TO THE INTERSTATE COMMERCE COMMISSION FOR THEIR CONSIDERATION**, and, of course, we both will have to be guided by their conclusions."

And as appears from the fact that he actually filed a petition with the Interstate Commerce Commission, but on being informed that it was prematurely filed, because the two roads were not near enough to join, (the J. & E. not having then or yet built its line to the junction point), withdrew it. This withdrawal took place long after the injunction herein was sued out by the A. & V. Ry. Co. When the injunction was sued on the application of the J. & E. Ry. Co. was actually pending before the Interstate Commerce Commission.

THE LAW OF ISSUE NO. 1.

I.

THE INTERSTATE COMMERCE ACT AS AMENDED BY THE TRANSPORTATION ACT 1920, ESPECIALLY SECTION 3, PARAGRAPHS 3 AND 4, AND SECTION —, VEST IN THE INTERSTATE COMMERCE COMMISSION EXCLUSIVE JURISDICTION OF TRACK CONNECTIONS BETWEEN INTERSTATE CARRIERS. NO STATE TRIBUNAL CERTAINLY NO JUSTICE OF PEACE COURT MAY ORDER SUCH CONNECTIONS OR FIX THE RELATIVE RIGHTS OF INTERSTATE CARRIERS THEREAT.

That the Interstate Commerce Commission, and it only, has jurisdiction to order a junction between these carriers under these circumstances, affirmatively appears from the following statutory law and judicial decisions:

The Interstate Commerce Act, as amended by the Transportation Act 1920, *changed the prior law* by conferring the following additional authority upon the Interstate Commerce Commission. Section 3, Paragraphs 3 and 4, of the Act:

“(3) All carriers engaged in the transportation of passengers or property subject to the provisions of this Act, shall according to their respective powers, *afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines* and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such con-

necting lines or unduly prejudice any such connecting line in the distribution of traffic that is not specifically by the shipper.

"(4) If the Commission finds it to be to the public interest and to be practicable without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, *including main line track or tracks for a reasonable distance outside of such terminal* of any carrier by another carrier or carriers on such terms and for such compensation as carriers affected may agree upon, or in the event of a failure to agree, as the Commission may fix, as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings."

See also Sec. 5, relative to consolidations.

The Sections thus written into the Interstate Commerce Act by the Transportation Act of 1920 have recently been construed by the courts of last resort of the States of Ohio and New York, and in each instance, it has been held that since the adoption of the Transportation Act of 1920, the **Interstate Commerce Commission has exclusive jurisdiction of the subject matter of track connections** between carriers engaged in interstate and intrastate commerce. The decisions on the subject are as follows:

Supreme Court of Ohio, Dec. 4, 1923 *Lake Erie, A. & W. R. Co. vs. Public Utilities Commission*, 141 N. E. 847;

(Syllabus) :

"Where a railroad engaged in interstate and intrastate commerce invokes the jurisdiction of the Interstate Commerce Commission for an order requiring another railroad likewise engaged in interstate and intrastate commerce to join in making a physical connection between the two lines, pursuant to Paragraph 3, Section 3, of the Interstate Commerce Act, as amended by the Transportation Act of February, 1920, (U. S. Comp. St. Supp. 1923 §8565 [3]), and before final determination thereof such applicant road, without dismissing such proceeding before the Interstate Commerce Commission, makes application to the Public Utilities Commission of Ohio for exactly the same connection, and secures the same in so far as intrastate commerce is concerned, and thereafter the Interstate Commerce Commission, whose jurisdiction was first invoked, having fully heard the original application, denies the same upon grounds affecting both interstate and intrastate commerce, held under such circumstances the jurisdiction of the Interstate Commerce Commission is exclusive and the Public Utilities Commission of Ohio was without jurisdiction to grant such order."

(P. 849) :

"The Court of Appeals of New York has recognized the exclusive character of this jurisdiction in the cases of *People of State of New York ex rel. New York Central Rd. Co. vs. Public Service Commission*, 233, N. Y. 113 135 N. E. 195, 22 A. L. R. 1073, in which it was held that the Public Service Commission of that State had no authority to make an order directing two railroad companies engaged in interstate and intrastate commerce, whose lines ran through the City of Bata-

via, to install a connecting line; that both of the railroads in question being engaged in interstate and intrastate commerce, the relief sought could be granted only by the Federal Interstate Commerce Commission, in compliance with the Interstate Commerce Act, Section 3, Paragraph 3, as amended by the Transportation Act of 1920.

"It is contended that the contrary view has been held by the Supreme Court of Wisconsin in *Chicago, St. Paul, Minneapolis & Omaha Ry. Co. vs. Railroad Commission of Wisconsin*, 178 Wis. 293, 189 N. W. 150.

"Referring to the decision of the Court of Appeals in this last named case, the Supreme Court of Wisconsin, at page 279 of 178 Wis., at page 152 of 189 N. W., uses this language:

"The Court of Appeals reversed the order of the Public Service Commission requiring a connection, on two grounds: First * * * and Second: *Because Congress by the passage of the Transportation Act of 1920 * * * so amended the second paragraph of Section 3 of the Interstate Commerce Act as to give the Interstate Commerce Commission jurisdiction of connecting tracks, and by so doing took away the right of a State Commission to act upon the subject.* The latter reason, even if conceded to be a valid one where it applies and **upon that subject we express no opinion,** does not affect this case because the proceedings were begun and the order made before the passage of the Federal Act.'

"But conceding that the Wisconsin case denies the exclusive character of the jurisdiction conferred by Paragraph 3, Section 3, of the Interstate Commerce Act, yet it, and also the New York, California and South Carolina cases, are to

be distinguished from the case at bar, for the reason that in none of them had the affirmative jurisdiction of the Interstate Commerce Commission been first invoked by the applicant.

"We are confronted with the situation, where a jurisdiction voluntarily invoked having been exercised, its effect cannot be denied."

"It is self-evident that this connection once made is equally available for interstate as well as intrastate commerce. The same connection is asked for before the Interstate Commerce Commission, and though granted by the Ohio Public Utilities Commission, in so far as intrastate traffic is concerned, its use for interstate commerce is at once available so far as the physical connection is concerned."

922 / Court of Appeals of New York, March 7, 1922, *People ex rel. New York C. R. R. Co. vs. Public Service Commission*, 233 N. Y. 113, 135 N. E. 195, 22 A. L. R. 1073:

(Syllabus 1):

"State authorities cannot compel interstate carriers to make physical connections between their tracks for interchange of traffic, notwithstanding the Federal Transportation Act provides that the authority of the Interstate Commerce Commission shall not extend to the construction of spur, industrial, team, switching, or side tracks located wholly within a State."
(P. 1076):

"We are also of opinion that the relator and the Lehigh Valley Company being engaged in interstate and intrastate commerce, the relief sought in this proceeding **CAN BE GRANTED ONLY BY THE INTERSTATE COMMERCE COMMISSION.**

"The Transportation Act of 1920 (41 Stat. at L. 479, Chap. 91, Fed. Stat. Anno. Supp. 1920, p. 120), §405, amended the second paragraph of §3 of the Interstate Commerce Act to provide: 'All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, an for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their lines, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.'

"A violation of that provision of the Act of Congress authorizes a complaint by any interested party to the Interstate Commerce Commission, and, after a hearing before that Commission, to such relief as the facts warrant. **THE INTERSTATE COMMERCE COMMISSION IS CLOTHED WITH AUTHORITY BY THE SECTION QUOTED TO COMPEL CARRIERS TO AFFORD REASONABLE AND PROPER FACILITIES FOR THE INTERCHANGE OF TRAFFIC BETWEEN THEIR RESPECTIVE LINES.** The order made by the Public Service Commission commands relator and the Lehigh Valley to make such trac connections between their roads as shall be necessary to establish and furnish adequate and convenient interchange of freight between said roads. To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several commissions mentioned were clothed with jurisdiction to grant the relief sought, and require us to ignore the well-established principle of

law that, the Congress having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, and exercise of like power by the State is thereby superseded. *Erie R. Co. vs. New York*, 233 U. S. 671, 58 L. Ed. 1149, 52 L. R. A. (N. S.) 266, 34 Supt. St. Rep. 756, Ann. Cas. 1915D, 138; *Chicago R. I. & P. Co. vs. Harwick Farmers' Elevator Co.*, 226 U. S. 426, 57 L. Ed. 284, 46 L. R. A. (N. S.) 203, 33 Sup. Ct. Rep. 174.

"Counsel for the Public Service Commission calls attention to subdivision 22 of §1 of the Interstate Commerce Act as amended by §402, Transportation Act 1920, which reads as follows: 'The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railway, which are not operated as a part or parts of a general steam railroad system of transportation.'

"Paragraphs (18) to (21) referred to, prohibit a carrier from extending its line of road or the construction of a new line or road, or the operation of any extension, save when permitted so to do in the manner provided for in the paragraphs enumerated. Counsel for the Commission argued that, the line or piece of road ordered to be constructed being wholly within the State, the Public Service Commission was empowered to make the order under review. We do not coincide with the argument of counsel. The track ordered to be constructed was not a spur, industrial, team, switching or side track, but rather, as stated in the order of the Commission, was a

track connection between the two roads of re-lator and the Lehigh Valley, and said two roads were also commanded to lay and install such other tracks as may be necessary to furnish adequate and convenient interchange of freight between said railroads.

"The order of the Appellate Division should be reversed, and the determination of the Public Service Commission annulled, with costs in this Court and the Appellate Division.

"Hissock, Ch. J., and Cardosa, McLaughlan, and Andrews, J. J., concur.

"Crane, J., concurs on first ground stated in opinion.

"Pound, J., not voting."

We respectfully submit that this reasoning is sound and that under the paragraphs quoted from the Transportation Act of 1920, Congress has taken possession of the field of track connections and has vested the exclusive power to regulate and control such connections in the Interstate Commerce Commission. This being so, the power of the State either through a railroad commission or through a condemnation court, or otherwise, to give or regulate track connections is at an end.

There can be no division of the field: The power of Congress is paramount and exclusive.

233 U. S. 671, *Erie R. R. Co. vs. N. Y.* (58 L. Ed. 1149:

"After Congress acts on a matter within its exclusive jurisdiction there is no division of the field of regulation."

New York Central R. R. Co. vs. Winfield, 244 U. S. 147, "Federal Employers' Liability Act":

"It is settled that under the commerce clause

of the Constitution, Congress may regulate the obligation of common carriers and the rights of their employees arising out of injuries sustained by the latter where both are engaged in interstate commerce; and it is also settled that when Congress acts upon the subject all state laws covering the same field are necessarily superseded by reason of the supremacy of the national authority."

Southern Ry. Co. vs. R. R. Comm., Indiana, 236 U. S. 439, "Safety Appliance Act":

"But Congress could pass the Safety Appliance Act only because of the fact that the equipment of cars moving on interstate roads was a regulation of interstate commerce. Under the Constitution the nature of that power is such that when exercised it is exclusive, and *ipso facto*, supersedes existing state legislation on the same subject. Congress of course could have 'circumscribed its regulations' so as to occupy a limited field. *Savage vs. Jones*, 255 U. S. 501, 533; *Atlantic Line vs. Georgia*, 234 U. S. 280, 293. But so far as it did legislate, the exclusive effect of the Safety Appliance Act did not relate merely to details of the statute and the penalties it imposed, but extended to the whole subject of equipping cars with appliances intended for the protection of employees. The state, therefore, could not legislate so as to require greater or less or different equipment; nor could they punish by imposing greater or less or different penalties. For, as said in *Prigg vs. Commonwealth of Pennsylvania*, 16 Pet. 539, 617: 'If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislation have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional

regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it . . . the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed."

Charleston & Car. R. R. vs. Varnville Furniture Co.,
237 U. S. 597:

"When Congress has taken the particular subject matter in hand, coincidence of a state statute is as effective as opposition, and a state law on the same subject cannot be sustained as a help to the Federal statute because it goes further than Congress has seen fit to go."

Adams Express Co. vs. Croniger, 226 U. S. 491, 505,
"Carmack Amendment":

"That the legislation supersedes all the regulations and policies of a particular State upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue and limits his power to exempt himself by rule, regulation or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all state regulation with reference to it. Only the silence of Congress authorized the exercise of the police power of the State upon the subject of such contracts. But when Congress acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the State ceased

to exist. *Northern Pacific Ry. vs. State of Washington*, 222 U. S. 370; *Southern Railway vs. Reid*, 222 U. S. 424; *Mondou vs. Railroad*, 223 U. S. 1."

Chicago & R. I., Etc., R. vs. Hardwick Elevator Co., 226 U. S. 426, 435:

"As legislation concerning the delivery of cars for the carriage of interstate traffic was clearly a matter of interstate commerce regulation, even if such subject embraced within that class of powers concerning which the State had a right to exert its authority in the absence of legislation by Congress, it must follow in consequence of the action of Congress to which we have referred that the power of the State over the subject-matter ceased to exist from the moment that Congress exerted its paramount and all embracing authority over the subject. We say this because the elementary and long settled doctrine is that there can be no divided authority over interstate commerce and that the regulations of Congress on that subject are supreme. It results therefore, that in a case where from the particular nature of certain subjects the State may exert authority until Congress acts under the assumption that Congress by inaction has tacitly authorized it to do so, action by Congress destroys the possibility of such assumption, since such action, when exerted covers the whole field and renders the State impotent to deal with a subject over which it had no inherent but only permissive power. *Southern Ry. Co. vs. Reid*, 222 U. S. 424."

Illinois Central R. R. vs. La. R. R. Comm., 236 U. S. 157:

"The switching of empty cars to and from a connection with an interstate railroad to a side track within the terminal of another railroad, for

the purpose of being there loaded with goods intended for interstate commerce, constitutes a part of interstate commerce, the regulations of which Congress has undertaken, and any order of a state commission regulating such switching transcends the limits of its power."

There is no need to multiply authorities on that point.

If we are right in this, then plainly the Mississippi Railroad Commission would be without authority to make such a connection and *a fortiori*, the Mississippi *condemnation court*, a tribunal presided over by a Justice of Peace, in which nothing may be contested save the amount of damages to be awarded would be without power to locate such a junction. If the Interstate Commerce Commission has the exclusive jurisdiction of subject-matter, then plainly the State of Mississippi and the various subdivisions and instrumentalities of that State are without that power, since they have no power, save such as is vested in them by the State, and if the State is devoid of power, certainly they are without it. Power, like water, can rise no higher than its source. If this position be correct, the fallacy of the contention of the Jackson & Eastern Railway Company is revealed. That company boldly asserts and arrogates **TO ITSELF THE EXCLUSIVE RIGHT** to determine where this junction shall be. It asserts the rights to locate the junction **WHERE IT AND IT ONLY DESIRES IT** and where the Alabama & Vicksburg Railway Company and the State Highway Authorities, represented by the Highway Commissioner, who took the stand and swore that the proposed junction would constitute a serious flood

menace to the State Highway (R. pp. 173 to 176), do not desire it and have compelling reason for not wanting it, and it proposes to carry out its own arbitrary wishes in the matter by invoking the aid of the state's condemnation court.

If this be lawful, then what becomes of the Commerce Clause of the Constitution, the Interstate Commerce Act and Transportation Act of 1920? It needs no lively imagination and no gift of prophecy to discover that if a State J. P. Court cant saddle upon an interstate railroad such junction points as it desires, that State J. P. Court can not only regulate, but can destroy the interstate railroad. There can be no half measures, no midway point, no twilight zone, **no concurring jurisdiction**. As the New York Court points out, either the State tribunal or the Federal tribunal must have exclusive jurisdiction, else we would be faced at once with the situation where the Federal tribunal would prohibit the junction, while the State tribunal would order it installed, or vice versa. This being so, it cannot be doubted that the proper authority to have exclusive jurisdiction and to give consideration to the rights of the various parties and the public and to actually order the junction is **NOT A STATE INSTRUMENTALITY** at all, but the Interstate Commerce Commission, which in turn is obligated, when it passes upon the question, to protect and reserve to the Alabama & Vicksburg Railway Company the rights guaranteed to it by the Constitution of the United States.

ISSUE NO. II.

WHEN A STATE CONDEMNATION STATUTE PREVENTS A DEFENDANT IN CONDEMNATION FROM RAISING IN THE CONDEMNATION SUIT ANY ISSUE WHATSOEVER, SAVE AS TO THE AMOUNT TO BE PAID, THE CONDEMNATION DEFENDANT IS DENIED THE EQUAL PROTECTION OF THE LAW GUARANTEED BY THE FOURTEENTH AMENDMENT, IF THE PETITION FOR CONDEMNATION FAILS TO DECLARE CLEARLY THE PRECISE PROPERTY AND THE PRECISE INTEREST THEREIN SOUGHT TO BE CONDEMNED, SINCE IN THE ABSENCE OF SUCH FREEDOM FROM AMBIGUITY, THE DEFENDANT CANNOT PROPERLY PREPARE AND PRESENT ITS LIMITED DEFENSE.

Under the law of the State of Mississippi, as construed by the Supreme Court of that State, both previously (see *Vinegar Bend case*, 43 Sou. 292) and in this very case (see 95 Southern 733, R. p. 28) the defendant in such a condemnation suit as was instituted by respondent for hearing before the Justice of the Peace R. p. 607, *et seq.*, is prohibited from raising any question or making any defense save the question of the amount to be paid to it for compensation for the property taken or damaged. The defendant could not in that condemnation proceeding object to the fact that the Jackson & Eastern Railway Company was seeking to condemn its main line track and destroy the continuity of its railroad, nor could it deny its right to do so. It could not object that the proposed junction was an improper one. It could not object to the sufficiency of the description of the property to be taken, although the Mississippi judges have been unable to agree as to what was sought to be taken. It could raise only one

question, that is the question as to the amount to be paid it when the plaintiff in condemnation takes its judgment and goes into possession of the property sought to be condemned.

The language used by the Supreme Court of the State of Mississippi in the case at bar in laying down this doctrine, is as follows (95 Sou. 733, R. p. 35) :

"Under the facts alleged in the bill as above set out we think the complainant has a right to resort to a court of equity to have this question determined, as it could not raise the question in the Eminent Domain proceedings as has been decided by this Court in the case of *Vinegar Bend Lumber Co. vs. Oak Grove & G. R. Co.*, 89 Miss. 84, 43 Sou. 292. In other words, in this case the Court construed the statute of eminent domain and adjudicated that **the only question that could be decided in that proceeding was the amount of damages.** That the Court could not decide the right of the plaintiff in such proceedings to institute the proceedings, **nor could any other question be raised than that of the amount of damages,** and that the Circuit Court on appeal from the judgment of the Eminent Domain Court had no greater right of jurisdiction than the Eminent Domain Court had.

(Black letters by present writer.)

Because it was thus deprived of an opportunity to defend itself in the condemnation court, the A&V Ry. Co. went into the Chancery Court of Lauderdale County, Miss., and sued out an injunction restraining the further prosecution by the Jackson & Eastern Railway Company of the condemnation proceedings. This bill

was dismissed by the Chancellor on demurrer and *superseas* was by him denied to complainant, but on application to the Supreme Court of Mississippi, that tribunal first allowed a *supersedeas* and later reinstated the Bill and remanded the case. See 91 Sou. 902, 95 Sou. 733, R. p. 28.

The case was then tried on its merits in the lower court, whereupon the Chancellor handed down a decree reading in part (R. p. 69):

"It is the opinion of the Court that the eminent domain proceedings instituted by the defendant against the complainant seek to condemn greater right in the property of the A&V Railway Company than a mere easement for the purpose of making its junction and it is the opinion of the Court that the J&E Railway Company, defendant herein, is not entitled to acquire a dominant right of ownership in the property of complainant under the law and the application should be amended to that extent."

Notwithstanding this finding, he dismissed the bill, thereby leaving the plaintiff in condemnation free to secure a judgment for an interest in the A&V Railway Company's property greater than the Chancellor considered that the law permitted and leaving the defendant in condemnation defenseless since the Supreme Court of Mississippi had already held in its decision in this very case R. p. 28, that it could set up only one defense, namely, the question of the amount to be paid it for the property taken.

The case then went to the Supreme Court of Mississippi for a third time and was argued before a section

consisting of three Judges of that Court. They being unable to agree, referred the case to the Court *en banc*. That Court then handed down a decision by a divided court, affirming the decision of the Chancellor, 101 Sou. 553, R. p. 677, which, as stated, left the plaintiff in condemnation free to obtain a judgment for an interest in the A&V Railway Company's property greater than the Chancellor considered legal and left the A&V Railway Company powerless while this outrage was proceeding. This decision of the Supreme Court of Mississippi together with its previous decision, 95 Sou. 733, R. p. 28, which it held to constitute in part the law of the case, are here sought to be reviewed by the Alabama & Vicksburg Railway Company. That review has been sought both by certiorari and by writ of error.

The ground upon which plaintiffs-petitioners seek relief is predicated on the above facts and is thus stated by Mr. Justice Anderson of the Supreme Court of Mississippi in his dissenting opinion in this case, 101 Sou. 556 (R. p. 683):

"The bill of the Alabama & Vicksburg Railway Company ought to have been sustained, in my judgment, on another ground, and that is that the eminent domain application of the Jackson & Eastern Railway Company failed to sufficiently describe the right or easement it sought to condemn. It is unquestioned that the Jackson & Eastern Railway Company has no right under the statute to condemn the fee in the tracks and right-of-way of the Alabama & Vicksburg Railway Company for the junction. Where a lesser interest than the fee in land is sought to be appropriated in a condemnation proceeding, the lesser interest

must be defined with such certainty as to apprise the owner of the nature and extent of the interest which is to be taken, and also with such certainty as to enable the jury to intelligently and according to law assess the compensation to be paid for the interest taken. *Pontiac Improvement Company vs. Board of Commissioners*, 104 Ohio State 447, 135 N. E. 635, 23 A. L. R. 866. Certainly the **proceedings ought to be definite enough** as to description of the right sought to be taken as that the owner of the fee will know how much he will have left after the proposed easement is taken. This is also necessary to enable the taxing authorities to properly assess the property. Unless what is taken by the condemnation proceedings is made definite how could the taxing authorities determine what assessment value to put on what was taken and what was left?"

Plaintiffs, petitioners, contend that (1) in view of the language quoted from the Supreme Court of Mississippi wherein that tribunal expressly stated that petitioners can raise in the condemnation suit no question save the question of the amount of money to be paid to it (R. P. 35):

(2) In view of the language quoted of the Chancellor who heard the case

(3) In view of the language quoted *supra*, from the dissenting opinion of Justice Anderson (R. p. 683), who held that the condemnation petition does not sufficiently describe the property sought to be acquired, (4) in view of the language of the condemnation proceeding quoted *supra* (R. p. 607), which describes in D-3, R. p. 607, a piece of land covering the A. & V. Ry. Co.'s main line of track, and says, R. p. 610:

"* * * and your applicant further shows that it is necessary for it to **OWN, OCCUPY AND USE** said strip of land, rights, privileges and easements, above described, in order properly to conduct its business as a common carrier, for which purpose it was organized."

And which concludes with a prayer reading (R. p. 610):

"WHEREFORE, your applicant prays that such steps be taken for the condemnation of said **LANDS**, rights, privileges and easements, for the purposes aforesaid, as are required by Chapter 43, and Section 4096 of the Annotated Code of 1906 of Mississippi.

"And as in duty bound, your applicant will ever pray."

it is apparent that unless the Supreme Court of Mississippi is reversed and the condemnation proceeding is enjoined, plaintiffs-petitioners will be deprived of their property without due process of law and denied the equal protection of the laws in contravention of the Constitution of the United States, particularly the Fourteenth Amendment. This is so, for the reason that unless that Court is reversed and petitioner's injunction is maintained, petitioners will be compelled to go before a jury of farmers with their hands tied so as to prevent their making any defense save on the question of amount of compensation (R. p. 35) and will have taken from them valuable property. **JUST WHAT PROPERTY WILL BE TAKEN IS THE SUBJECT OF A DIFFERENCE OF OPINION AMONG THE MISSISSIPPI JUDGES THEMSELVES. THIS**

BEING SO, CERTAINLY THE JURY WILL NOT AND CANNOT KNOW JUST WHAT PROPERTY IS BEING TAKEN; and plaintiffs-petitioners, unless this fact is ascertained and made certain in advance, cannot make proper proof of their damages and cannot receive due process of law and the equal protection of the laws, as required by the Constitution of the United States.

See *Pontiac Improvement Company vs. Board of Commissioners*, 135 N. E. 635 (23 A. L. R. 866); Ohio 1922:

“Where a lesser interest than a fee in real estate is sought to be appropriated in a condemnation proceeding by a municipality or board for public use, the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest which is to be taken and also with such certainty as will enable a jury in accordance with the Constitution to intelligently assess the compensation to be paid for the interest taken.’ For lack of such certainty the Ohio Court enjoined this condemnation proceeding.”

20 C. J. Par. 6:

“DESCRIPTION OF PROPERTY, AND LOCATION AND NATURE OF IMPROVEMENT—
(a) In General. The petition in condemnation proceedings must describe the property sought to be taken, defining the location and quantity required with such certainty that it may be identified, and the extent of the petitioner’s claim made known to the owner, and a failure of the petition, complaint or application to thus describe the property, or any uncertainty in this respect, will vitiate the proceedings, unless an amendment of the description is allowed.”

ISSUE No. III.

NO TRIBUNAL CAN TRANSFER AN ESSENTIAL SECTION OF THE MAIN LINE TRACK OF ONE CARRIER TO ANOTHER CARRIER FOR A LIKE PURPOSE WITHOUT VIOLATION OF THE FOURTEENTH AMENDMENT AND THE CONTRACT CLAUSE OF THE FEDERAL CONSTITUTION.

Plaintiffs-petitioners point out that Sections 1867 and 1868 of the Mississippi Code of 1906, being a part of Chapter 43 of the Code of 1906, the law under which the J. & E. Ry. Co. is expressly proceeding in the condemnation proceedings, and which is expressly referred to in the prayer of the condemnation suit (R. p. 610), read as follows:

"1867 (1692) JUDGMENT. Upon the return of the verdict, the Court shall enter a judgment as follows, viz.:

✓
✓
✓ "In this case the claim of (naming him or them) to have condemned certain lands named in the application, to-wit: (here describe the property), being the property of (here name the owner), was submitted to a jury composed of (here insert their names) on the _____ day of _____, A. D. _____, and the jury returned a verdict fixing said defendant's due compensation and damages at _____ dollars, and the verdict was received and entered. Now, upon payment of the said award, applicant can enter upon and take possession of the said property and appropriate it to public use as prayed for in the application. Let the applicant pay the costs for which execution may issue. "J. P.""

"1868 (1693) RIGHTS OF APPLICANT AFTER THE JUDGMENT. Upon the return of the verdict and entry of the judgment, if the applicant pay the defendant whose compensation is

fixed by it, or tender to him the amount so found and pay the costs, he or it shall have the right to enter in and upon and take possession of the property of such defendant so condemned, and to appropriate the same to the public use defined in the application; and in case the defendant and his attorney absent themselves from the court, the payment may be made to the Clerk of the Circuit Court for him, and such officer shall be responsible on his bond therefor and shall be compelled to receive it."

That as the A. & V. Ry. Co. will be precluded from raising any issue in these proceedings save the question of the amount of the award (R. p. 35), there will necessarily be inserted in the form of judgment prescribed by Article 1867 of Chapter 43 of the Mississippi Code, the description of the property sought to be condemned, as described *supra* this brief, p. 9, and in the map on page 9 of the petition for certiorari (R. p. 607) and under Articles 1867 and 1868, the J. & E. Ry. Co. upon payment of the amount of the award will be privileged "to enter upon and take possession of said property and appropriate it to public use, as prayed for in the application."

Now the Jackson & Eastern Railway Company has alleged (R. p. 610):

"And your applicant further shows that it is necessary for it to **OWN, OCCUPY AND USE THE SAID STRIP OF LAND**, rights, privileges and easements above described in order properly to conduct its business as a common carrier, for which purpose it was organized."

The said J. & E. Ry. Co. will, therefore, unless re-

strained, pay the amount of the award and will then proceed "to own occupy and use the said strip of land", which strip of land consists of a section of the main line of track, embankment and rails of your petitioners. See map, p. 9, of Petition for Certiorari.

There is no provision in the Mississippi Statutes for a joint use by the applicant and the owner whose land is condemned. The applicant is entitled by the very terms of the statute and of the judgment to enter upon and take possession of the property condemned, meaning the exclusive possession.

This means then that the main line of one interstate railroad is being taken from it for a like purpose by another, a newer and a much smaller railroad. This cannot be done. As a result of the action of the Supreme Court of Mississippi in dissolving its aforesaid injunction and permitting this to be done, the A&V Ry. Co. is being deprived of its property without due process of law and denied the equal protection of the Constitution of the United States, which is expressly pleaded and relied on by it in its original petition for injunction, and the State of Mississippi is interfering with and burdening interstate commerce in violation of the Commerce Clause of the Constitution. The provisions of the Constitution and Laws of the State of Mississippi which are held by the Supreme Court of Mississippi to justify such procedure are illegal and void as in contravention of the Commerce Clause and the Contract, of the Federal Constitution.

Counsel for the J. & E. Ry. in their brief in opposition to the application for certiorari say:

"The Supreme Court of Mississippi in its opinion on the second appeal found on page 555, 101 SO., in referring to the contention of the Alabama & Vicksburg Railway Company in its application for condemnation was seeking to acquire a portion of the main line of the Alabama & Vicksburg Railway Company, said:

"Another question presented now which was also in the former appeal, though not discussed in that opinion, is that the injunction should have been sustained, because the application for the condemnation of the right-of-way of the appellant sought to condemn the ownership or fee in the strip of land of appellant's main line for the proposed connection purposes, whereas the law permits only the condemnation of an easement for a connection. We have examined and construed the language used in the application for condemnation, and while the words, 'Own, occupy and use', said strip of land, rights, privileges and easements above described, would seem to indicate that it was an attempt to condemn the ownership in the strip of land to be used for connecting purposes, instead of the condemnation of an easement thereof, yet we think that, taking the application as a whole, the language should be construed to mean that only an easement is sought to be condemned. Under the law an easement is all that could be secured by the condemnation proceedings, and we think that was all that was intended to be condemned, and the judgment of condemnation must necessarily be limited to the acquirement only of an easement for the proposed connection. Therefore, we hold that the application when properly construed, seeks only an easement which the appellee, Jackson & Eastern Railway Company, is entitled to under the law."

This Court is bound by the construction of the laws of Mississippi and the legal effects of judgments rendered by the state courts, as given by the Supreme Court of the state. *Thornton vs. Duffy*, 254 Ws. 361; 65 Law Edition 304."

But this seems to us entirely beside the point for two reasons:

FIRST, our contention which was clearly stated by Judge Anderson is, that the A. & V. Ry. Co. has a constitutional right to have the petition for condemnation make clear what is to be taken from it for the reasons given in the *Pontiac* case, namely, (1) so that it may be apprised of the nature and extent of the interest to be taken, and (2) so to enable a jury in accordance with the Constitution intelligently to assess the compensation to be paid for the interest taken. Unless this is done the condemnation petition is not due process of law, but is a travesty and a farce. That no unambiguous description of what was to be taken was included in the condemnation petition, R. p. 607, is at once and abundantly apparent from the reading of that petition and is emphasized by the fact that the chancellor who heard the case held:

"It is the opinion of the Court that the eminent domain proceedings instituted by the defendant against the complainant seek to condemn a greater right in the A. & V. Railway Co. than a mere easement for the purpose of making its junction." * * *

Justice Anderson held:

"The bill of the Alabama & Vicksburg Railway Company ought to have been sustained in my

judgment on another ground, and that is that the eminent domain application of the J. & E. Ry. Co. failed to sufficiently describe the right or easement it sought to condemn."

And the majority of the Court itself held:

"We have examined and construed the language used in the application for condemnation, and while the words 'own, occupy and use' said strip of land, rights, privileges and easements above described **WOULD SEEM TO INDICATE THAT IT WAS AN ATTEMPT TO CONDEMN THE OWNERSHIP IN THE STRIP OF LAND TO BE USED FOR CONNECTING PURPOSES**, instead of the condemnation of an easement thereof, yet we think that, taking the application as a whole, the language should be construed to mean that only an easement is sought to be condemned."

Showing plainly that in their opinion the language was not free from ambiguity.

SECOND, we point out that the question as to what that language means, that is to say, the question of what the J. & E. Ry. Co. is asking for and what it will take unless restrained is not a question of Mississippi law at all, but is a **question of fact**. The Mississippi law is that it gets a judgment for whatever it asks. It may be that what the J. & E. is asking for and will take judgment for is more than the Mississippi law allows them, but that circumstance will not help the A. & V. Ry. Co. if the Mississippi courts allow the J. & E. to take that judgment. It may even be that the Mississippi Courts would set that judgment aside, but that is not entirely certain and is no reason for permitting it to be entered.

There is nothing in the Constitution of the United States allowing a state to take away the property of a citizen on a promise to restore it by judgment to be thereafter rendered. Upon the question of fact as to what the J. & E. is asking for and will take judgment for if permitted, this Court is entirely at liberty to make its own finding, regardless of the Mississippi Court. On that question of fact we respectfully submit that when the J. & E. Ry. Co. on R. p. 607 said:

"That the following **real property**, rights, privileges and easements are sought to be condemned for the purposes hereinafter stated, to-wit: A strip of land of varying widths, etc."

When it said, p. 610, Sec. 4:

"Applicant further shows that it is necessary for it to **own, occupy and use said strip of land**, rights, privileges and easements above described in order properly to conduct its business as a common carrier, for which purpose it was organized."

When it concluded that petition with a prayer reading:

"Wherefore your applicant prays, that such steps be taken for the condemnation of **SAID LANDS**, etc."

which admittedly are a section of the A. & V. Railway Company's main line track, it made it plain that it was asking for more than an easement. In resolving this question this Court will bear in mind that the Supreme Court of Mississippi has expressly said that the A. & V. Ry. Co. could not in the condemnation proceedings

raise "any other question than the amount off damages" (R. p. 35), and the Mississippi Statutes being Articles 1867 and 1868 of the Code quoted *supra* expressly provide that the judgment of that Court shall read in part:

"Now upon payment of the awardl applicant can enter upon and take possession of the said property and appropriate it to public use as prayed for in the application."

The application describes **A STRIP OF LAND**; it says that it is necessary for the applicant "to own, occupy and use said strip of land", and the prayer is "for the condemnation of said lands". All this was bound to go into the judgment since the statute says "take possession of the said property and appropriated it for public use as prayed for in the application" with no riight vouchsafed the A. & V. save to fight over the amount to be paid to it for the land. That judgment was to be recorded and the J. & E. was then entitled to "enter upon and take possession of the property".

Unless the English language has lost its meaning, we have a case wherein a standard trunk line railroad has only this Court as a shield against a condition under which it will have a section of its main line track torn away from its "ownership, use and occupation", under which it will become two diisconnected railroads instead of one continuous line. This being so, that trunk line railroad is entitled to involke through this Court the protection of the contract clause and the Fourteenth Amendment of the Federal Constituion.

LAW AS TO ISSUE NO. III.

To Permit a Small Unimportant Railroad to Condemn the Right to "Own, Occupy and Use" for its Purposes a Section of the Main Line Track of one of the Important Railroad Arteries of the State, which Section of Track has been Owned and Used as the Main Line for Many Years by the Larger Railroad Under Its Charter from the State and which Section of Main Line Track is Essential to the Maintenance of the Continuity of Its Trunk Line, Is to Deprive the Larger Railroad of Its Property Without Due Process of Law to Deny It the Equal Protection of the Law to Devest Its Vested Right and to Impair the Obligation of Its Contract with the State, the Whole in Violation of the 14th Amendment and the Commerce and Contract Clauses of the Federal Constitution.

To summarize: It appears from the condemnation petition (R. p. 607), that the J&E Ry. Co. is seeking "to own, occupy and use" the main line track of the A&V Ry. Co. It appears from the record that the A&V Ry. Co. is a railroad corporation chartered under the laws of the State of Mississippi, which has owned, occupied and used this section of its main track for many, many years. It appears that the line of the A&V Ry. Co. is a practically straight, single line of track without branches extending from Meridian, Mississippi, to Vicksburg, Mississippi, (R. p. 148) and it appears that the section of track sought to be condemned by the J&E Ry. Co. is about midway between Meridian and Vicksburg, and that if this section is condemned, the continuity of the line of the A&V Ry. Co. will be broken and its railroad

divided into two disconnected pieces of track. We have seen by the admission of President Neville of the Jackson & Eastern himself (R. p. 506), that the traffic of the two railroads may not even be compared, the A&V Ry. Co. being a trunk line and one of the important through interstate rail and mail routes of the southwest (R. p. 92), while the Jackson & Eastern is a not yet complete experimental route and is *an enterprise of so doubtful a nature that the Interstate Commerce Commission has been unwilling to permit it to sell its bonds to the public*, the Interstate Commerce Commission's finding on this subject being dated July, 1921, and being as follows:

(R. p. 541):

"THE RECORD AS A WHOLE FAILS TO AFFORD REASONABLE ASSURANCE THAT THE PROJECT WILL BECOME A PERMANENTLY SUCCESSFUL ENTERPRISE. However, since local interests are ready and willing to assume the burden with a full knowledge of what the future will hold for the enterprise, it seems proper that they should be permitted to do so, *but in view of the uncertain future of the road, we do not think it would be proper for us to sanction at this time the issuance of bonds to finance its construction.*"

We have quoted President Neville's own statement on oath in this case that the purpose of the J&E in seeking to condemn the A&V main line was to save itself expense. (R. p. 206.)

That under these circumstances, the J&E Railway Company could not acquire through any state instrumentality the right to *own, occupy and use* a section of the

main line of the A&V Ry. Co., without infringement of the rights, privileges and immunities guaranteed to the A&V Ry. Co. by the Constitution of the United States, particularly the contract clause and the XIV amendment, is conclusively demonstrated by the following authorities and by the reasoning upon which these authorities rest.

20 C. J., page 606, §92:

"A limitation on the power of a railroad company to appropriate the property of another railroad is that **it cannot take the property of another company to apply it to the same use.** If the taking would result merely in a change of ownership without affecting the use of the property, it becomes a matter of mere private concern without at all affecting the public interest. Nor can one railroad company take a fragment of a competing road constituting the most valuable part of it where this will destroy the usefulness and value of the remaining fargment."

Elliott on Railroads, 3rd Edition, §1130:

"So, it is said that, 'while a public service corporation like a railroad company is bound to render to the public certain services appropriate to its particular functions, it is not bound to permit its property to be subjected to use by a rival corporation, unless by express statutory enactment and by due process of law thereunder. And, where the appropriation of the franchise of a street railroad company by a railroad company *was made merely as a matter of economy, and to avoid the purchase of valuable property which the railroad company must have acquired to reach its terminus without interference with the street railroad, it was held that no such necessity existed.*

Elliott on Railroads, 3rd Edition, §1225:

"Taking right of way of another road: When not allowed. Where the statute confers only a general authority to condemn property for railroad purposes land appropriated by a railroad company for public use can not afterwards be appropriated by another company for a similar use where the two cannot coexist, *except in case of a necessity so absolute that without such appropriation the grant to the latter company will be defeated*, a necessity arising from the very nature of things, over which the company has no control, *not one created by the company itself for the sake of convenience or economy*. As a general rule, under such authority, a corporation will not be permitted to condemn property already devoted to such use. This rule seems particularly applicable where one company is seeking to condemn and take the right of way of another company longitudinally. **THUS, IT HAS BEEN HELD THAT ONE RAILROAD COMPANY CANNOT APPROPRIATE A PORTION OF THE RIGHT OF WAY OF ANOTHER RAILROAD COMPANY FOR THE PURPOSE OF BUILDING A PARALLEL ROAD.** Nor will one railroad company be permitted for any purpose to take such a part of the line of another road as to practically destroy such road. And courts should give due consideration to the question of the future needs of a railroad in fulfilling its chartered purpose and performing its public duty as a common carrier before they undertake to deprive a railroad company of any part of its right of way at the instance of another corporation. Where a petition by a railroad company for the appointment of commissioners to condemn the 'located route' of an existing railroad shows that it seeks to condemn a

part of the route generally, and not merely for the purpose of crossing, an order made thereon will be set aside. And where a railroad corporation is seeking to condemn a longitudinal section of the right of way of another company for its exclusive use, it may be restrained by injunction unless express authority to make such condemnation has been conferred."

163 Fed. 724 *Elkins Ry. Co. vs. Western Md. R. Co.*,
(p. 732):

"It must be conceded that, where one railroad company has secured under its charter rights the right of way and built thereon its line of road and is using the same for public uses, *the Legislature could not authorize the taking wholly thereof by another railroad corporation for like public use.* The extent of its power would be to authorize the second company to place upon the land an additional burden or easement on or over it to be constructed so as 'not to impede transportation of persons or property along the same' by the first corporation owning the fee title to the land. These fundamental principles were well set forth and settled by Tucker, J., in the *Tuckahoe Canal Company vs. Tuckahoe & James River Railroad Co.*, 11 Leigh (Va.) 42, 36 Am. Dec. 374. Where railroads cross each other for the mutual benefit of both, and do 'not impede the transportation of persons and property along the' route of the first one owning and operating the right of way, the Legislature may well direct as it has in clause 7, §2343 (Chapter 54, §50), that the railroad intersected 'shall unite with the corporation owning such new railroad in forming such intersection', but this section cannot be construed as, first, authorizing the new company *to take wholly the property of the old to the destruction of its right to use and operate*

its road; nor, second, to take such right of easement and joint use without paying just compensation. Such a construction of this statute would be to allow confiscation and destruction of vested rights in the older company which are always to be first considered."

(P. 734, 735) :

"If necessary, I would hold that, if such condemnation were attempted, the equity court would have full power to enjoin and stay the prosecution of any such proceeding at law until it had by its decree, fixed the location and character of the crossing to be condemned. I have deemed this discussion necessary in order to determine the contention of the electric company that it is entitled to have the crossing of its choice as a matter of right. * * *

"If then, this court must determine, as such seems to be the requirement of the law, the location of a crossing over defendant's tracks for this electric road, I feel constrained to say from the report of the engineers and the evidence in the case that such crossing should not be fixed or allowed at the point asked for by the electric company. Without discussing the evidence, it clearly shows that such crossing would be very dangerous to the railroad and to the public; that it would be very expensive to both roads, would very greatly impede the railroad company's necessary operations, and can be avoided. So far as crossing at First Street is concerned, I think it practicable, but undesirable, far better than the one sought, however."

186 Fed. 1022, *Elkins Ry. Co. vs. Western Md. Ry. Co.* Same case on appeal:

"PRITCHARD, Circuit Judge. The learned judge who heard this case below prepared an exhaustive opinion clearly setting forth the various points at issue. We have carefully considered the record and the evidence that was heard by the court below, and in view of the facts and circumstances surrounding this case we are of opinion that the rulings of the lower court were eminently proper, in as much as the opinion of the lower court, reported in 163 Fed. 723, contains a full statement of the facts and deals with the various questions of law presented, de adopt the same as the opinion of this court. For the reasons stated, the decree of the lower court is affirmed."

CERTIORARI WAS DENIED ON THIS CASE,
223 U. S. 725.

141 Fed. 578, *So. Dakota Cent. Ry. vs. Chicago, M. & St. P. Ry. Co.*

"Although corporations engaged in business of a nature which requires them to serve the public are said to be public corporations, they are, in fact but private enterprises inaugurated for the benefit of their stockholders. While railroads are subject to use for the public benefit, they are owned, not by the public, but by corporations, which so far at least as ownership is concerned are private corporations. And if one such corporation may take the property of another, so as to deprive the latter of the use to which it was devoted, except in cases expressly authorized by the statute, or where public necessity demands such taking, there would be no reasonable limit to the conditions under which the power of eminent domain might be exercised. The full extent to which any of the courts have

gone upon this subject is that the land appropriated to a particular public use is not, under all circumstances, withdrawn from liability to be taken by legislative authority in the exercise of the power of eminent domain for another public use, with this qualification, that a special grant cannot be construed to authorize subversion of the former use, unless it appears, by express words or by necessary implication, to be the legislative intent. As there is no statute in the state of South Dakota which authorizes the taking by one railroad of the right of way of another longitudinally, but the power granted is limited to the crossing or intersection of the right of way of another company and the uniting with its railroad, *the attempted condemnation proceedings of a portion of the right of way of the Milwaukee Company longitudinally cannot be sustained.*"

93 Pa. State, 159, *In re Pennsylvania Railroad's Appeal*:

This was a case in which the Pennsylvania Railroad attempted to take the property of a street railway in order to reach its depot. The Court said:

"Now the appellant admits that it has entered upon and for its own uses and purposes has destroyed part of the plaintiff's road, but it attempts to justify its action in that it was necessary for it so to do in order to reach its depot on Dock Street. But the question recurs—how came it that this warehouse was placed in such a position that it became necessary to enter upon and cross Dock Street in order to reach it? The answer is found in the testimony of Mr. Kneass, the assistant to the President of the Railroad Company. He says the whole block from Walnut to Dock Street and from

Delaware Avenue to Water Street, excepting some stores fronting on Dock Street at the corner of Water Street, and at the corner of Delaware Avenue, was purchased for the use of a freight depot and the offices necessarily connected therewith. But we learn from the evidence of Mr. Trautwine, whose ability as an engineer no one doubts, that a practical entrance to this depot might be made either at the corner of Delaware Avenue, or at a short distance north of it. This, of course, would avoid any interference with the rights of the appellee. The appellant did not purchase or take as it might has done the property on the corner of Dock Street and Delaware Avenue and so was obliged to enter upon with its tracks and cross Dock Street in order to reach its warehouse. *The reason why this property was not purchased or taken is explained by the witness first above mentioned to have been that the necessities for that property were not imperative and the price therefor not satisfactory.* He also says further on that the reason for not purchasing this property **WAS ONE OF ECONOMY MERELY.** We thus discover that this necessity, by which the unlawful acts of this company, appellant, are sought to be excused is one of its own making—**A MATTER OF ECONOMY.** It is cheaper to use Dock Street and the appellee's franchise than to buy the property above mentiode. **A DEFENSE MORE WEAK OR ONE MORE BARREN OF EQUITY COULD SCARCELY BE IMAGINED."**

"The appeal was dismissed."

The Court will note that this case is on all fours with the case at bar. Neville admits that the route A-B one the maps into Jackson would be more direct and his reason for **NOT** taking that route was economy.

134 Fed. 973, *Evansville & H. Traction Co. vs. Henderson Bridge Co.*

"While a public service corporation, like a railroad company, is bound to render to the public certain services appropriate to its particular functions, it is not bound to permit its property to be subjected to use by a rival corporation, unless by express statutory enactment and by due process of law thereunder."

193 Ill. 217 (61 N. E. 1090), *Suburban R. R. Co. vs. Metropolitan R. R. Co.*:

In this case, one street railway company was attempting to condemn a portion of the line of another street railway company. The court said, on page 1092:

"But one corporation cannot take the property of another already devoted to a particular use for the purpose of applying it to the same use. *Where there is no change in the use, there cannot be a change in the ownership under the law of eminent domain.* *L. C. & W. Ry. Co. vs. C. & E. Ry. Co.*, 112 Ill. 589. In this case, the proposed use is the same. It appears that petitioner desires to connect with another surface railroad at 52nd Street and it is doubtless desirable to run across this property for that purpose without deflecting from the direction of its original line. *There is, however, no physical obstacle to its taking another route and reaching the surface without taking this 30-foot strip.*"

112 Ill. 589, *C. & W. Ry. Co. vs. C. & E. Ry. Co.*s

"In the absence of a clearly expressed intention to the contrary, the courts will not so construe a railway's charter as to authorize one company to

take the property of another already devoted to a particular public use for the purpose of applying it to the same use. When there is no change in the use, it becomes a matter of mere private concern without at all affecting the public interest. This rule applies only when the taking would result simply in a change of ownership without affecting the use of the property sought to be taken."

214 Pa. 307 (63 Atl. 741) *Commonwealth, etc. Ry. vs. Bond*:

(Syllabus 2) :

"Where a street railway is granted permission to lay its track in a street, allowing a later corporation to lay a part of its tracks on the tracks of the first company, **IS AN UNCONSTITUTIONAL TAKING OF THE PROPERTY OF THE FIRST COMPANY.**"

(P. 742) :

"This court has decided that while the Legislature may in the exercise of the right of eminent domain take franchises and property engaged in a public use and apply them to another public use, *a statute cannot be sustained which confers upon one corporation for profit a right to appropriate the property of another corporation to exactly the same public uses for the convenience and profit of the younger corporation.* P. & M. S. Ry. Co.'s Petition 203 Po. 354 (54 Atl. 191). * * * The rule in these cases is based upon the principle that the granting of the use of the tracks of a former company to a later company was the taking of property of the former company for the convenience and profit of a younger corporation and **THEREFORE IS UNCONSTITUTIONAL.** The principle

of these cases rule the case at bar. *To superimpose on the tracks of the former company the whole, or any part of the tracks of a later company, is the taking of property of the former company within the meaning of the rule in the cases just cited. There is no distinction in principle between the taking of the whole of the tracks of the former for the use of the later company and the taking of part of the tracks.*" 203 P. 608 (53 Atl. 513) *Commonwealth et al. vs. Uwchlan St. Ry. Co.*; 203 Pa. 354 (53 Atl. 191) *P. & M. St. Ry. Co.* (P. 792) :

"THE CONSTITUTIONALITY of Section 14 with its amendment **IS DENIED.** Can its constitutionality, under the settled law, be sustained? For whatever might be our opinion of the justice or wisdom of such legislation, we would not strike down an act of the legislature, a co-ordinate branch of the Government, who are as much bound to obey the fundamental law as we, unless the act palpably violates that instrument. We are in no doubt as to just what power the Legislature intended to confer by these acts. It was a clear grant of a right to the younger to enter upon the easement of the older company, and take possession of 2500 feet of its track, poles and wires, thereafter to use them for its corporate purposes. It is not material that this possession was not to be exclusive. *In whatever light it is viewed, it was an authority to appropriate to a certain extent the franchises and property of the older company.* In our earlier judicial history, it was sometimes doubted whether the property of a corporation, used under its franchise for its own profit and the convenience of the public, could, under the right

of eminent domain, be again appropriated by the State, or by a second corporation which had been granted the right of eminent domain; but it has long since been settled that all private property may be taken for public use; that all property not purely public in private, whether it belongs to an individual or a corporation, aggregate or sole; that while a corporation aggregate may be created for public purposes, and be granted rights and immunities only because it serves the public, yet, the purpose of the members is private profit to be realized by serving the public, and in that sense the franchise and property it acquires, whereby the individual profit accrues to each member of the corporation, are private property, and may be appropriated to another public use by the State. The substance of all the authorities (and they are many) is as stated by Chancellor Walworth, 3 Paige 73; 'Notwithstanding the grant to individuals, the eminent domain, the highest and most exact idea of property remains in the government, or in the aggregate body of the people in their sovereign capacities; and they have a right to resume the possession of the property in the manner directed by the Constitution and laws of the State whenever the public interest requires it.' But in addition to the power resting on the state's inherent right of sovereignty, Section 3, Article 16, of our Constitution, declares: 'The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals.

"Therefore, the authority of the Legislature to confer on a corporation the right to take the franchise and property of an older corporation for

public use cannot be questioned. Whether it be expedient or wise for the Legislature to exercise this authority to take property for public use is purely a political question, and one solely for the Legislature. But whether the use to which it is sought to be appropriated, the property authorized to be taken is a public use is a judicial question, for the determination of the courts. *L. Bridge Co. vs. Dix*, 6 Howard 507; *City of Pittsburg vs. Scott*, 1 Pa. 309; *Jessup vs. Loucks*, 55 Pa. 350; *Appeal of Stewart*, 1 Pa. DVC; *Appeal of P. N. & N. Y. R. R. Co.*, 120 Pa. 90; *Appeal of Edgewood R. R. Co.*, 79 Pa. 257; *Commission vs. Pa. Canal Co.*, 66 Pa. 41."

"In all these cases, the court decided whether the appropriation of the franchise of the older under the right of the eminent domain was a new and enlarged use for the benefit of the public and therefore such a 'public use' as brought it within the meaning of the Constitution. The first case cited (*Bridge Co. vs. Dix*), went to the Supreme Court of the United States on a writ of error to the Supreme Court of Vermont, the plaintiff in error averring that a statute of Vermont was in conflict with the Federal Constitution. The Bridge Co., in 1795, had been invested by the Legislature with the exclusive privilege of building a bridge over West River within four miles of its mouth, with the right to collect tolls from those passing over it, the franchise to continue for one hundred years. The corporation, under its franchise, constructed its bridge and enjoyed its profit until the year 1839, when another act was passed, authorizing the State Courts, whenever in their judgment the public good so required, to take any real estate, easement or franchise of another turnpike or other corporation for the purposes of a public highway

—to observe, however, the same rules in making compensation as provided by law in other cases where property was taken for public uses. Upon the petition of Dix et al., proceedings were instituted for the construction of a public road or highway between certain terminals; the road passing upon and over the bridge, thus converting it into a free highway for all the public. Damages were assessed in favor of the Bridge Company, and paid into Court. *The Company denied the right of the Legislature to appropriate its franchise and property on the ground that such appropriation impaired its contracts with the State as implied by its charter, and therefore contravened the Constitution of the United States.* The Vermont courts decided against the Company and their judgment was affirmed by the Federal Court. Three opinions were filed in the United States Supreme Court concurring in this judgment against the Bridge Company. It was held that the franchise and property of the company was subject to the right of eminent domain and could be taken for public use by the State without impairment of the contract relation with the State, **if the second use to which the property was devoted was another and more beneficial to the public than the old one;** that the use for which it was taken, although practically of the same kind as that made of the bridge before, was a public use, in that thereafter it became free to all the public, whereas before it was limited to those who could pay or were willing to pay tolls; that the use was enlarged and more beneficial to the general public when free from tolls. The case was ably argued by Mr. Webster for the plaintiff in error, and by Mr. Phelps, *contra*. The opinions by the three Justices Daniel McLean and Woodbury, are very full and elabor-

ate. Nearly all the questions raised are discussed, and the cases in the different states bearing on them cited. *It will be noticed from an examination of the report that counsel for the defendant in error concedes, and the court assumes, that the franchise could not have been taken from one corporation for profit under the right of eminent domain in the State and vested in another private corporation of the same kind for profit.* The public use is made to depend on the fact that thereafter it was to be free. It was, therefore, not a transfer of the franchise and property of one corporation for profit to another of like character, but a taking for purely public use. In the constitutions of nearly all the states, their bills of rights and eminent domain articles are substantially the same as ours. In all their courts, on questions such as the one before us (*Bridge Co. vs. Dix, supra*), has generally been cited and approved. It has been cited with approval in our own court in the cases already noted. *In re Towanda Bridge Co.*, 91 Pa. 216, is an exactly similar case in its essential facts. It in effect decides that the growing necessities of a progressive age must be met by the exercise of the State's power of eminent domain. The public road appropriates the bridge path; the turnpike road, the public road; the electric railway, the turnpike road; the steam railroad, the canal bed. And so this court held so recently as *Harrisburg, C. & C. Turnpike Road Co. vs. Harrisburg & M. Elec. Ry. Co.*, 177 Pa. 585, 35 Atl. 850, 34 L. R. A. 600, where the railway company appropriated a small part of the road bed of the turnpike company under this same act of 1889; that the exercise of domain in that case was without doubt constitutional. The use was changed and greatly enlarged for the benefit of the public

by the younger corporation. **BUT IN NO CASE HAVE I BEEN ABLE TO FIND IN ANY OF THE STATES A JUDICIAL JUDGMENT UP-
HOLDING THE RIGHT OF ONE CORPORA-
TION, FOR PROFIT, TO APPROPRIATE THE
PROPERTY OF ANOTHER TO EXACTLY THE
SAME USES FOR THE CONVENIENCE AND
PROFIT OF THE YOUNGER CORPORATION.**

“The same assumed power which gives the right to take property already appropriated under a grant can lawfully confer domain without restriction on property not so appropriated. In fact, there is no serious obstacle in the way of multiplying and constructing electric railways to meet every reasonable public demand for them. **IF THE NECESSARY COST OF CONSTRUCTION BE AN INSUPERABLE OBSTACLE,** unless property rights of like corporations be disregarded, **THEN THERE IS NOT THAT PUBLIC USE TO BE MET WHICH, WITHIN THE MEANING OF THE CONSTITUTION, WARRANTS THE GRANTING OF EMINENT DOMAIN.** A reasonable expectation of public patronage will always tempt investment of capital. If, however, under the law, the investment can be put in constant peril by the demands of a newer corporation for the property of the older, it may well be doubted whether, in the end, the public would not suffer from the refusal of capital to invest in improvements for public use. Capitalists will take the risk that in the indefinite future their franchise and property may be taken to answer the public necessities and demands for a newer and more improved method of travel and communication. It is doubtful whether they would readily take the risk of the appropriation of their franchise and

property by every organization instituted for precisely the same purpose under the general act of 1889; for there would then be no limit to the extent of the appropriation, except the cupidity of the new company and the will of the Legislature."

157 Mass. 364 (25 N. E. 92, L. R. A. 765), *Cary Library vs. Bliss*:

Mary Cary died, giving to the Town of Lexington, certain money to be used in the acquisition of the "Cary Library". The library was acquired and operated and subsequently additional gifts were granted to it. Thereafter an attempt was made by the State to condemn it and take it over for a new library.

"1. Held that, by the acceptance of the terms of the gifts, the town and the trustees agreed to the scheme of management proposed by the donor; that these subsequent gifts were made with reference thereto; and that without the consent of all parties, in the absence of any necessity for a change of management, **THE ACT WAS IN VIOLATION OF CONST. U. S. ARTICLE 1, PARAGRAPH 10, PROVIDING THAT NO STATE SHALL PASS ANY 'LAW IMPAIRING THE OBLIGATION OF CONTRACT'.**"

"2. The statute further provided that the property, part of which consisted of money, should be taken, under the right of eminent domain 'to be held and applied in the same manner as if held by said trustees'. Held that, as there was no public necessity for the taking, **THE LEGISLATURE COULD NOT AUTHORIZE IT.**"

On page 96, the Court said:

"The question arises whether taking property from one party who holds it for a public use by

another to hold it in the same manner for precisely the same public use can be authorized under the Constitution. Can such a taking be founded on a public necessity? It is unlike taking property for a public use which is already devoted to a different public use. There may be a necessity for that. In the first case, the property is already appropriated to a public use as completely in every particular as it is to be. Can the taking be found to be for the purpose which must exist to give it validity? In every case it is a judicial question whether the taking is of such a nature that it is or may be founded on a public necessity. If it is of that nature, it is for the Legislature to say whether in a particular case the necessity exists. *We are of the opinion that the proceeding authorized by the statute was, in its nature, merely a transfer of property from one party to another, and not an appropriation of property to public use, nor a taking which was, or which could be found by the Legislature to be a matter of public necessity. Bridge Co. vs. Dix, 6 How. 507; Lake Shore & M. S. R. R. Co. vs. C. & W. R. Co., 97 Ill. 506; C. & N. W. R. R. Co. vs. C. & E. R. R. Co., 112 Ill. 589. FOR THESE REASONS, THE MAJORITY OF THE COURT ARE OF THE OPINION THAT THE STATUTE OF 1888, c. 342, IS NOT IN CONFORMITY WITH THE CONSTITUTION OF THE UNITED STATES."*

77 Conn. 83 (58 Atl. 467) *Star Burying Ground Assn vs. North Lane Cemetary Assn.*:

"A statute authorizing the condemnation of land will not be construed as applying to land already devoted to a public use, unless such application is clearly covered by the statute. * * * a condemnation of land actually appropriated to

and fully serving a public use, for the same use by a different owner, may be a condemnation only in form, and in reality be a mere compulsory transfer of the property from one private owner to another, *which it is beyond the power of the Legislature to provide for.*"

ISSUE No. IV.

UNTIL A RAILROAD HAS OBTAINED A CERTIFICATE OF PUBLIC NECESSITY FROM THE INTERSTATE COMMERCE COMMISSION, IT CANNOT BUILD A NEW LINE OR CONNECT WITH AN ESTABLISHED LINE NOR CAN IT AFTER OBTAINING SUCH A CERTIFICATE, DEVIATE FROM THE ROUTE THEREIN INDICATED WHEN BUILDING THE NEW LINE. NOR CAN IT RESORT TO STATE AGENCIES TO FORCE A JUNCTION WITH ANOTHER RAILROAD AT A POINT NOT ON THE ROUTE NAMED IN THE CERTIFICATE OF PUBLIC NECESSITY WITHOUT VIOLATING THE OTHER RAILROAD'S RIGHTS, PRIVILEGES AND IMMUNITIES UNDER THE INTERSTATE COMMERCE ACT AS AMENDED BY THE TRANSPORTATION ACT OF 1920.

The Court will recall that Art. 18, Sec. 1 of the Interstate Commerce Act provides:

"No carrier by railroad subject to this Act, shall undertake the extension of its line of railroad, or the construction of a new line of railroad, shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over and by means of such additional or extended line of railroad unless and until

there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction and operation of such additional or extended line of railroad."

The Jackson & Eastern Railway Company recognized in this instance the authority of this Section and sought and obtained from the Interstate Commerce Commission a certificate which is in the record as Respondent's Exhibit (R. p. 542), and which shows that the line authorized by the Interstate Commerce Commission was to be built **FROM SEBASTOPOL, MISSISSIPPI, TO JACKSON, MISSISSIPPI, NOT TO CURAN'S CROSSING.** The record shows conclusively that Curan's Crossing is not an intermediate point on the line between Sebastopol and Jackson, Mississippi. See 298 Fed. 488, *Lancaster vs. G. C. & S. F. R. R.*, where the Court stressed the necessity of obtaining consent from the Interstate Commerce Commission prior to the construction of a new line of railroad between any two points.

Said certificate of public necessity was apparently granted with reluctance, since in its opinion, which accompanied said certificate, rendered July 12, 1921, in Finance Docket No. 9, the Commission said (R. p. 541):

"The record as a whole fails to afford reasonable assurance that the project will become a permanently successful enterprise. However, since local interests are ready and willing to assume the burden with full knowledge of what the future may hold for the enterprise, it seems proper that they should be permitted to do so. But in view of the uncertain future of the road, we do not

think it would be proper for us to sanction, at this time, the issuance of bonds to finance its construction."

Under the certificate of public necessity and under the law, both the Commission and the A. & V. Ry. Co. are entitled to have the J. & E. Ry. Co. build to Jackson, Mississippi, and not to Curan's Crossing. Certainly the A. & V. is entitled to be heard before the Commission before a railroad is built to Curan's Crossing, and the Commission is entitled to pass upon the proposed change in route. This right, privilege and immunity has been denied the A. & V. Ry. Co. by the decisions of the Supreme Court of Mississippi and to the extent that they authorize this the Mississippi Statutes conflict with the Federal Constitution and Statutes.

This record shows without contradiction that when the Jackson & Eastern Railway Company filed its application with the Interstate Commerce Commission for a certificate of public necessity for a line from Sebastopol, Mississippi, to Jackson, Mississippi, the Alabama & Vicksburg Railway Company made no appearance and it opposed no objection because it did not think that it was interested, R. p. 536. Had the J. & E. Railway Company, at that time, applied for a certificate of public necessity from Sebastopol, Mississippi, to Curan's Crossing, Mississippi, the ALABAMA & VICKSBURG RAILWAY COMPANY would have been entitled to notice and would have been entitled to be heard before the Interstate Commerce Commission in opposition to the issuance of such a certificate and it would certainly have availed itself of that opportunity and would have op-

posed the issuance of the certificate. If now, the Jackson & Eastern Railway Company is allowed under the aegis of a certificate of public necessity authorizing it to build from Sebastopol, Mississippi, to Jackson, Mississippi, to utilize a State condemnation court for the purpose of building a line from Sebastopol, Mississippi, to Curan's Crossing, Mississippi, the ALABAMA & VICKSBURG RAILWAY COMPANY has been deprived of its opportunity to be heard before the Interstate Commerce Commission in opposition to such a project. The vindication of this right, privilege and immunity which it has under the Interstate Commerce Act, as amended by the Transportation Act of 1920, is one of the things the ALABAMA & VICKSBURG RAILWAY COMPANY is seeking from this Court, in this proceeding.

President Neville, however, contended below, that because he filed a map with his application to the Interstate Commerce Commission which he says shows he intended to go to Curan's Crossing and thence by the A&V Ry. Co. rails to Jackson, Mississippi, the Interstate Commerce Commission when it issued the order authorizing him to build from Sebastopol, Mississippi, to JACKSON, MISSISSIPPI, thereby authorized him to build from Sebastopol, Mississippi, to Curan's Crossing and thence, **TO USE THE A. & V. LINE TO JACKSON, MISSISSIPPI.** The plain and complete answer to this is that after filing his petition and map, President Neville filed a second petition with the Interstate Commerce Commission, which is to be found in the Record at page 570, and which was filed on Dec. 10, 1921, or 5 months after the issuance by the Commission on July 12, 1921, of the Certificate of Public Necessity. In this

second petition the Jackson & Eastern Railway Company asked leave to use the Alabama & Vicksburg Railway Company's line from Curan's Crossing into Jackson, Mississippi.

On receipt of this second petition, the Secretary of the Interstate Commerce Commission wrote informally to Neville and Stone counsel for the J. & E. Ry. Co., the letter, Exhibit 4, page 547, in which he said that the Commission could not give him that right since he was not asking for leave to use terminals but was asking leave to use part of the A. & V. main line, thus conclusively demonstrating that both President Neville and the Interstate Commerce Commission construed the certificate of public necessity theretofore issued by the Interstate Commerce Commission as meaning what it said, namely, that the Jackson & Eastern Railway Company was authorized to build from Sebastopol, Mississippi, to Jackson, Mississippi, **BUT WAS NOT AUTHORIZED TO BUILD FROM SEBASTOPOL TO CURAN'S CROSSING, MISSISSIPPI, AND TO USE THENCE THE A. & V. RAILWAY LINE TO JACKSON, MISSISSIPPI.**

In this same petition the J. & E. had asked the Commission to grant it a junction with the A. & V. under p. 9 of Sec. 1, of the Act. Mr. McGinty in his letter also points out that that section as construed by this Court in 226 U. S. 14, applied only to existing lateral branch lines and that the J. & E. Railway was not an existing but only an embryonic lateral branch line. This application was still pending before the Interstate Commerce Commission when the condemnation suit was filed.

The direct line between Sebastopol and Jackson,

Mississippi, is considerably to the north of Curan's Crossing and by using that direct route the Jackson & Eastern Railway Company would reduce its distance into Jackson, Mississippi, by a mile and a half or more. This affirmatively appears from the record. See Map Exhibit B to Duffy's testimony, where the direct line has been drawn between the points (a)-(b) and the Map Exhibit A to Duffy's testimony, where the direct line has been drawn between the points (1)-(2). See also the testimony of Mr. Hayden, R. p. 371, and Mr. E. Ford, R. p. 383, and Mrs E. M. Durham, R. p. 406

TWO ALTERNATIVES.

This testimony makes it plain that if the Jackson & Eastern Railway Company wishes to go direct to Jackson, Mississippi, as authorized in the Order of the Interstate Commerce Commission, (R. p. 542), its best route would be the route along the line (1)-(2) marked out by Hayden on Exhibit A of Duffy's testimony. If it wishes to go to a connection with the Alabama & Vicksburg Railway Company then its best route is to utilize the route actually surveyed under directions of Mr. E. M. Durham, Jr., which route, Mr. Durham has sworn, (R. p. 403), would be a cheaper one to build and a cheaper one to maintain for the Jackson & Eastern Ry. Co. In **neither case is it proper or necessary to incur the hazards and difficulties of CURAN'S CROSSING.**

Marion & Eastern R. R. Co. vs. Missouri Pacific R. R. Co., Supreme Ct. Illinois, (19596), decided Oct. 28, 1925. Rehearing denied Dec. 3, 1925.

In this case defendant railroad company proposed to extend a track more than a mile in length,

covering territory already served by plaintiff's railroad, and if laid, was to be used in interstate as well as intrastate commerce. Held that such additional track could not be termed a spur-track, but was rather an extension of the railroad line, and permission for its construction must be obtained from the Interstate Commerce Commission. The nature of such an extension of track depended on the facts in each case. Ordinarily a spur or industrial track was one used for loading, reloading, storing and switching of cars and for other services merely incidental to the regular train haul.

ISSUE No. V.

CERTAINLY NO STATE AGENCY HAS THE RIGHT TO IMPOSE UPON AN IMPORTANT INTERSTATE CARRIER A CONDITION WHICH WILL MAKE IT DANGEROUS TO THE LIFE AND LIMB OF ITS EMPLOYEES AND ITS PASSENGERS FOR IT TO OPERATE ITS TRAINS. THE ATTEMPT TO IMPOSE SUCH A CONDITION UPON IT IS A VIOLATION OF ITS RIGHTS UNDER THE FEDERAL CONSTITUTION PARTICULARLY THE COMMERCE CLAUSE AND THE CONTRACT CLAUSE AND UNDER THE INTERSTATE COMMERCE ACT AMENDED BY THE TRANSPORTATION ACT 1920.

The basis of the fifth ground upon which plaintiffs-petitioners seek relief is this: They contend that they have conclusively proven by **eminent, disinterested** engineers that the place arbitrarily selected for a junction by the J. & E. Ry. Co. is entirely improper and is highly dangerous. They point out that the A. & V. trainmen are unanimous in condemning the proposed junction as a death trap. They point out that it is shown **without contradiction** that there is a safe location for the junction at a point less than three miles distant, which junction

will be cheaper to build and cheaper to maintain, and they respectfully submit that the installation of this death trap junction will be a burden upon and an interference with interstate commerce. It will retard and endanger its interstate trains, its interstate freight and its interstate crews and passengers and its interstate roadbed and equipment. It will add to its operating costs and damage claims. It is in the truest sense an interference with and burden upon interstate commerce and as such relief from it and from the Mississippi statutes under which it is imposed is obtainable in this Honorable Court.

On this subject the record is as follows:

MR. S. A. NEVILLE, the defendant's own president, testified, p. 499:

"Q. DO YOU KNOW MR. NEVILLE OF ANY INSTANCE THAT YOU CAN NAME TO ME IN WHICH THERE HAS BEEN ESTABLISHED A UNCTION BETWEEN TWO RAILROADS AT A POINT WHICH WAS ON THE OUTSIDE OF A CURVE, AS A 10-FOOT FILL BETWEEN TWO 400-FOOT TRESLES, IN THE IMMEDIATE VICINITY OF A HIGHWAY CROSSING AND IN THE FLOOD REACH OF AN UNRULY RIVER?"

"A. I DON'T KNOW AS THERE IS SUCH A ONE ANY WHERE ELSE IN THE WORLD."

R. p. 615, **MR. E. M. DURHAM, JR.**, swore:

"Answer No. 2. During the past twenty years I have been employed in the maintenance of way and construction departments of the Southern Railway, in the valuation of the Atlanta, Birmingham & Atlanta Railway, in the executive department of the Southern Railway, and by the United

States Railroad Administration. I have, in that period, successively held the positions of assistant engineer, resident engineer, principal assistant engineer, executive (fol. 1184) general agent, assistant chief engineer and finally chief engineer with the Southern Railway; valuation engineer with the Atlanta, Birmingham & Atlanta, manager, department of way and structures (another name for chief engineer), and finally director, division of liquidation claims with the United States Railroad Administration."

R. p. 616, Mr. E. M. Durham, Jr., swore:

"Int. No. 6. If you state that you are familiar with the said proposed junction, please give (a) the physical conditions of the track of the Alabama & Vicksburg Railway Company at that point and of the proposed track of the Jackson & Eastern Railroad Company at that point; and (b) state your opinion, as an engineer of the proposed point of junction, giving your reasons fully?

"Ans. No. 6. (a) The proposed track of the Jackson & Eastern Railroad connects with the main line of the Alabama & Vicksburg Railway on the outside of a 1 degree 50 minute curve, about 750 feet east of the west end thereof, and extends northerly on a curve in the reverse direction; the proposed junction is about midway between two 400-foot trestles on the Alabama & Vicksburg Railway main line, which are about one-quarter mile apart; and it is immediately east of an important highway crossing; the Alabama & Vicksburg Railway embankment at that point is about 10 feet high. (b) **IN MY OPINION, IT WOULD BE DIFFICULT TO FIND A WORSE LOCATION FOR THIS JUNCTION,** between pearson and the Pearl Rirevr; it means a facing point switch

on the outside of a curve, where fairly high speeds are normally maintained, and the necessary reduction of the elevation of the outer rail, thus increasing the hazard of derailment; (fol. 1186) turnouts on the outside of a curve should never be permitted except in cases of extreme necessity; when Alabama & Vicksburg trains are stopped at this proposed junction, either to pick up cars or to allow Jackson & Eastern trains to clear the hazard to trainmen, compelled by their duties to alight, is increased by reason of the height of the fill at this point, and the trestles (mentioned above) on either side of the junction; this is especially true at night. Because of the curvature the distance at which enginemen can see whether this turnout is clear is greatly reduced; if sidings for the interchange or switching of cars are constructed, which would be necessary, this would be magnified. The location of an important highway crossing, practically at the switch of the junction, will interfere with switching, thereby blocking the main line for a greater length of time, and, most important of all, greatly add to the danger and inconvenience of that portion of the public who use the highway.

"Int. No. 7. Have you made any studies to determine whether a junction between the proposed line of the Jackson & Eastern Railroad and the Alabama & Vicksburg Ry. Co. may be made elsewhere between Jackson and Pearson's Station, Mississippi?

"Ans. No. 7. I have.

"Int. No. 8. Please state the relative merits of the proposed junction point between the Jackson & Eastern Railroad and the Alabama & Vicksburg Railway near Curan's Crossing, Mississippi, suggested by the Jackson & Eastern Railroad Company, and of any other junction (fol. 1187) point between Jackson, Mississippi, and Pearson Station,

Mississippi, which you may have in mind?

"Ans. No. 8. East of the Pearl River and north of the Alabama & Vicksburg Railway the hills parallel the river at a distance varying from two to three miles as far north as Drake's Church. (See Government topographical map.) Between the hills and the river within this area the ground is low and much of it is swamp, most of it is subject to overflow during the periodic floods of the Pearl River. The present Jackson & Eastern Railroad location leaves the foot hills near Drake's Church and follows, substantially, the highway from that point to the proposed junction at Curan's Crossing. As the ground along this route is low, and subject to overflow, the present line, if adopted, should be provided with a large amount of trestle work in order that the flood waters from the river may be carried off in part through the swamp which lies between the foot hills and the main channel, as is the case at present; if frequent trestles are not provided, the danger of **WASHOUTS, WHICH ARE HIGHLY PROBABLE IN ANY EVENT**, is greatly enhanced. If this danger could be altogether obviated by following the foothills more closely, at a reasonable construction cost, it would seem the part of wisdom to do so. With this in view, I made a reconnaissance of this territory and had a survey made of an alternate route between Drake's Church and the Alabama & Vicksburg Railway, joining the latter at a point about 2½ miles east of the proposed connection at Curan's Crossing. The result is shown on drawing attached (marked exhibit 'A'). It will be noted that:

"(Fol. 1188.) (1) A straight line may be secured on this route.

"(2) It is of substantially the same length as the Jackson & Eastern Railway survey.

"(3) The grading is about as light as could be desired for proper drainage.

"(4) A nearly level grade can be secured.

"(5) It is altogether clear of the Pearl River overflow.

"(6) The only trestle work necessary is that required to care for drainage from the foothills.

"(7) It does away altogether with the objections cited to the connection at Curan's Crossing.

"I have not seen a profile of the Jackson & Eastern Railroad location but have been over the ground; I have no hesitation in stating, however, that if some consideration to the drainage is given in planning the work on the two routes, **THE ALTERNATE ROUTE SUGGESTED ABOVE WILL BE CHEAPER, BOTH TO CONSTRUCT AND TO MAINTAIN.** Construction will be cheaper because less trestle work is required and because the cuts will provide a portion of the material to make the fills, the Jackson & Eastern Railway location would be practically all fill, if proper practices are followed. Maintenance will be cheaper because of better soil conditions, better drainage, and less trestle work."

Record, page 201, **MR. A. A. WOODS** swore:

"Q. What is your name, residence and occupation, Mr. Woods?

"A. A. A. Woods; residence, Cincinnati; occupation, chief engineer for the maintenance of the western lines of the Southern Railway.

"Q. How many miles of track, approximately, have you under supervision?

"A. About four thousand miles.

"Q. Have you any engineer's degree from any educational institution?

"A. Yes, sir; Tulane University of New Orleans.

"Q. How long have you been engaged in railroad engineering?

"A. In the neighborhood of twenty-seven years.

"Q. Have you been engaged in any other occupation since your graduation from the Tulane University?

"A. No.

"Q. You got your degree there in 1895?

"A. 1895.

. . . .

Record, page 202:

"Q. Have you any connection with the A. & V. Railway Company?

"A. No.

. . . .

Record, page 203:

"Q. The A. & V. Railway Company at Curan's Crossing is on a grade or fill of from 8 to 10 feet, and it is on a curve and the crossing is between two trestles, and is in Pearl River bottom. I would like to ask you if, in view of these facts, you consider the point, approximately at Curan's Crossing, as a proper or improper place for a junction say of the A. & V. Railway and a proposed new railroad built from Sebastopol, Mississippi, to this point east of Pearl River?

"A. I CONSIDER THAT POINT FOR A CONNECTION PROBABLY THE MOST OBJECTIONABLE THAT COULD BE PICKED OUT BETWEEN PEARL RIVER BRIDGE AND PEARSON.

"Q. You have studied this map, Exhibit 'F', which lies on the table before you, which shows the proposed point of connection?

"A. Yes, sir.

"Q. State why you say that the proposed point of connection is probably the most objectionable

point that you could find between Pearl River and Pearson?

"A. There is a trestle just west of the crossing usually known as Farish Bridge, and when the water of Pearl River is in its high stages it goes over the trestle with great force, seeking the line of the river below the A. & V. and in connection with what we have already had there if this proposed junction is put in, that would tend to increase that current and volume of water going over the bridge, which would (fol. 402) have a tendency to cut out the embankment at the ends of the bridge.

"This connection is also on a curve and any switch turnout from the main track is more difficult on a curve. It is more difficult to do switching on a curve; it is more apt to cause derailment that would be on a tangent track. Another difficulty about the connection is the super-elevation of the outer rail on the curve. In this case, the super-elevation of the track coming in would be on one side, and the super-elevation of the A. & V. would be on the other side. That would be difficult.

"Q. Explain to the Court what would be the effect of that condition?

"A. The effect would be to break the old elevation of the A. & V. to make this connection safely.

"Q. Are there any other objections to that point from your observations of the conditions there?

"A. There are objections to these trestles, one on each side of the connection. If it was necessary to do switching at that point, set out and pick up cars, it would leave the train hanging over one or the other of these trestles, and the trainmen would be in danger if they attempted to couple or

uncouple cars on the trestle, or even if they attempted to go by the train on the side of the trestle.

"Q. In view of all these difficulties which you have enumerated what in your opinion as a railroad engineer and a railroad operative would you say as to the desirability or undesirability of this proposed junction?

"A. It is decidedly undesirable." R. p. 204.

See also the testimony of Mr. Jones, p. 86; Mr. Ford, p. 374, *et seq.*; Mr. Stamm, p. 143, *et seq.*

MR. LEE EVANS swore that he had been a conductor on the A. & V. Railway for nearly twenty-two years and (R. p. 107) was general chairman of the Conductors' Union; that his duties required him to go over this proposed junction on his train **THIRTY-FOUR TIMES A MONTH**, with interstate trains.

He swore (R. p. 106):

"Q. Explain to the judge what that is?

"A. The reason, Mr. Monroe, is that this is on a curve and on a fill, and it makes it dangerous to operate trains by there, and even more so than it would be if it was on a level and straight piece of track. A point of intersection of that kind necessitates more or less switching, and my experience is that at a crossing like this one causes many difficulties and objections. At a place of this kind it is really impractical to do any switching at all for the reason the engineer cannot see the signals. To give the signals the trainmen would have to go on the opposite of the train from where their work was, the switching was being done, and the fact that it is on a fill would be an additional objection.

(R. p. 109):

"Q. State what your opinion is in regard to this being a dangerous point for a connection?

"A. **MY OPINION IS THAT IT IS A DEATH TRAP FOR THE MEN EMPLOYED TO DO WORK THERE.**

.

"Q. Mr. Evans, please state whether or not you have received any complaints of this proposed point of junction from the men operating trains along there?

"A. Yes, sir. From particularly every man we have got.

"Q. Has made complaints?

"A. Yes, sir. They have made this complaint, that there ought to be something done about having a connection with any railroad at a place of this kind." (R. p. 110.)

MR. ED GRAHAM swore, page 128, that he was a passenger locomotive engineer; that he had been running on the A. & V. Railroad thirty years, and that his duties took him over this proposed junction (R. p. 128) **THIRTY-FOUR TIMES A MONTH** (R. p. 129); that he was chairman of the Locomotive Engineers.

He swore (R. p. 129):

"Q. Has any complaint been made to you as such chairman of the locomotive engineers of the Alabama & Vicksburg Railway to this proposed junction?

"A. Yes, sir.

(R. p. 130.) "Q. Answer the question, please, have any complaints been made?

"A. Yes, sir.

"Q. Will you please state what the objection to this proposed junction is?

"A. My men object to it.

"Q. State what your objection is?

"A. I will give my objection, which is the objection of all the men of the railroad. . . .

"Q. Mr. Graham, from the point of view of this being on a curve, state what dangers there would be as to this proposed point of junction being on a curve?

"A. WELL, IT IS MERELY A DEATH TRAP FOR THE TRAINMEN; IT IS JUST A DEATH TRAP, THAT IS THE WAY WE CONSIDER IT.

R. p. 131:

"Q. What crossing is that?

"A. It is known as Curan's Crossing, and the crossing is on a fill, which is dangerous. It is always a dangerous crossing.

"Q. What is the situation as to the fill there of the A. & V.?

"A. It is on a high fill. I say a high fill. I suppose it is ten feet or something like that.

"Q. What have you to say as to that in connection with the proposed junction?

"A. Just as I said before, it is a death trap for the trainmen doing the work on that fill. (P. 131.)

See also the Engineers' formal protest (R. p. 584), and of Conductors (R. p. 586).

Against this the J. & E. put on the stand not a single trainman who would operate over the proposed junction. As their main engineer they placed on the stand a man who a few months before had applied to the A. & V. Ry. Co. for the lowest position in its engineering corps, that of rodman (R. p. 332). Their witnesses all admitted

that if they had the option they would prefer to make a junction not on a curve nor on a fill, not at a public road crossing, not between two 400-foot trestles, and not in Pearl River Valley. (Neville, p. 495; Stacker, pp. 307, 308, 309; Duffee, pp. 265, 266.) But it has been located there, and as far as the Mississippi courts are concerned it may stay there. The A. & V. Ry. Co. therefore comes to this court for relief. Its contention is that to deliberately put a known danger into the operation of an interstate railroad which will endanger the lives of its trainmen and passengers and slow down its operation is to put a burden upon interstate commerce, and that any state statute which authorizes this is in contravention of the Commerce Clause of the Constitution and the Interstate Commerce Act as amended.

ISSUE NO. VI.

The provisions of the Constitution and Statutes of the State of Mississippi to the extent that they have been held by the Supreme Court of Mississippi to authorize the doing of these things, are unconstitutional as being violative of the Federal Constitution, particularly the Commerce Clause, Art. I, Section 8, Par. 3; the Contract Clause, Art. I, Section 10, Par I; the Fourteenth Amendment and the Federal Interstate Commerce Act as amended by the Federal Transportation Act 1920.

The Mississippi Supreme Court having held that the Statutes of Mississippi particularly Sections 1854 to 1877 and 4093 to 4099 inclusive, of the Mississippi Code of 1906 and Sections 184 and 190 of the Mississippi Constitution of 1890 grant to the Justice of Peace Court and the J.

& E. Railway Company, the rights objected to in Issues Nos. I to V inclusive, *supra*. We respectfully submit that said statutes so crushed are in conflict with the Commerce Clause, Art. I, Sec. 8 §3, the Contract Clause, Art. I, Sec. 10, Par. 1, and the XIV Amendment and the Federal Constitution and with the Interstate Commerce Act as amended by the Transportation Act 1920, and that to the extent that they do so conflict they must be set aside.

All of which is respectfully submitted.

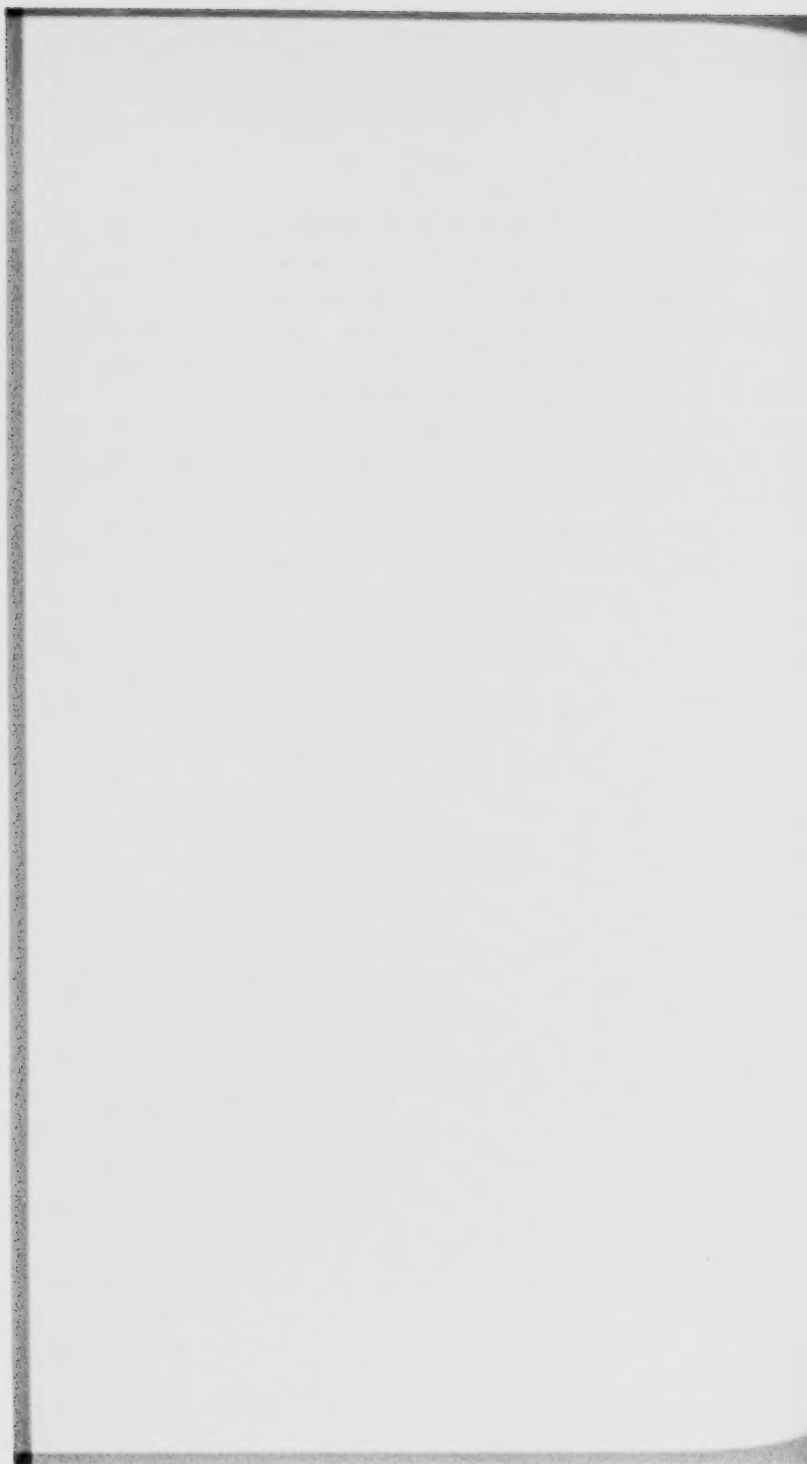
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A. S. BOZEMAN,
S. L. McLAURIN,
MONTE M. LEMANN,
J. BLANC MONROE,

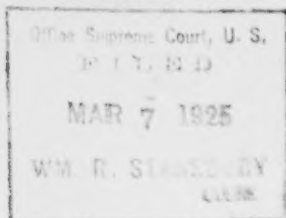
Attorneys.

MONROE & LEMANN,

Of Counsel.

February, 1926.





IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, [REDACTED] 1925

No. [REDACTED] 244

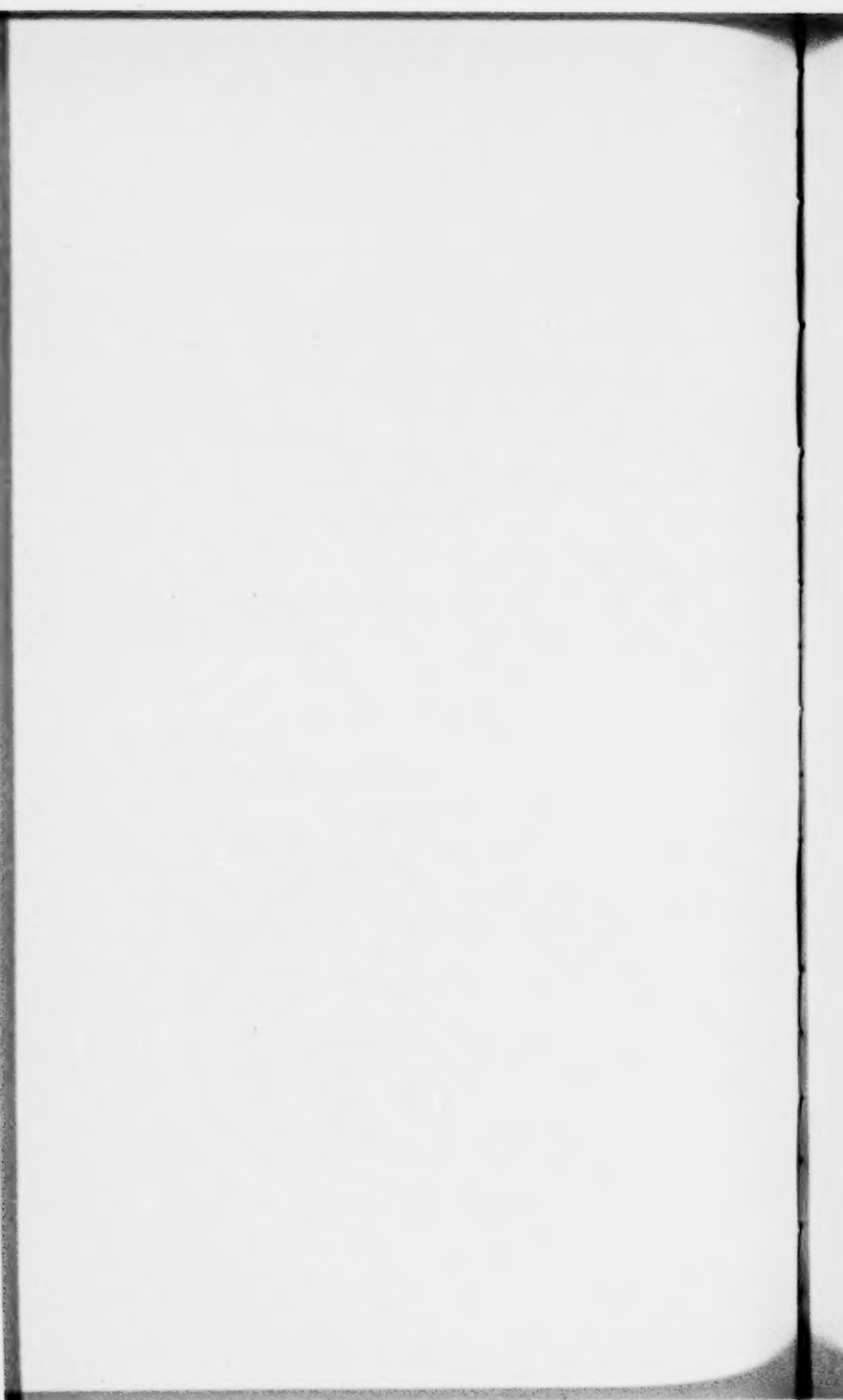
ALABAMA & VICKSBURG RAILWAY COMPANY
ET ALS., PETITIONERS,

vs.

JACKSON & EASTERN RAILWAY COMPANY,
RESPONDENT.

**BRIEF OF JACKSON & EASTERN RAILWAY COM-
PANY IN OPPOSITION TO THE APPLICATION
FOR WRIT OF CERTIORARI.**

MARCELLUS GREEN,
GEORGE B. NEVILLE,
HARDY R. STONE,
Counsel for Jackson & Eastern Railway Co.



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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1924.

No. 839.

ALABAMA & VICKSBURG RAILWAY COMPANY
ET ALS., PETITIONERS,

vs.

JACKSON & EASTERN RAILWAY COMPANY,
RESPONDENT.

**BRIEF OF JACKSON & EASTERN RAILWAY COM-
PANY IN OPPOSITION TO THE APPLICATION
FOR WRIT OF CERTIORARI.**

IF THE COURT PLEASE:

It is alleged by the petitioners that the Jackson & Eastern Railway Company is seeking to acquire by its condemnation proceedings a part of the main line of the Alabama & Vicksburg Railway Company, and thereby destroy the con-

tinuity of petitioners' railroad from Meridian to Vicksburg, Mississippi. In its petition and brief on file in support thereof, the Alabama & Vicksburg Railway Company quotes only a portion of the application of the Jackson & Eastern Railway Company in the condemnation proceedings. When the entire application is considered it will be apparent that the only right which the Jackson & Eastern Railway Company seeks to acquire by the condemnation proceedings is a switch connection. The very pertinent portions of the Jackson & Eastern Railway Company's application, to which the petitioner has failed to call this court's attention, are the following:

"Paragraph 2. That in order for this applicant to construct, maintain and operate its said railroad, it is necessary to connect its main line of railroad as now surveyed and definitely located with the main line of the Alabama & Vicksburg Railway Company, one of the defendants herein, with a switch turn-out at a point on the main line of the Alabama & Vicksburg Railway Company, and in the manner as hereinafter described."

The petitioner has quoted in its petition for a writ of certiorari the first part of Paragraph 3 of the application for condemnation, but omits the following part of Paragraph 3:

"The connection which the applicant herein seeks to acquire by condemnation proceedings with the main line of the defendant the Alabama & Vicksburg Railway Company is to be a No. 9 turn-out and the use of 75-pound rail of the same character and design which is now in use on the main line of the Alabama & Vicksburg Railway Company at the point of connection. The said connection is to be

made as shown by said diagram, Exhibit 'A,' hereto, and is to be located so that the point of the left hand frog will be 1,867 feet east of the first box signal semaphore situated on the main line of the Alabama & Vicksburg Railway Company west of Curran's Crossing and east of Pearl River; the said turn-out to operate so that cars will be interchanged between the said Alabama & Vicksburg Railway Company and this applicant, and the said turn-out to be protected by a lock, and the main line of the said Alabama & Vicksburg Railway Company to be further protected by a derail switch which is to be placed on the rails of the applicant at a point 100 feet beyond the point of the frog of the connecting turn-out on the north rail of applicant's track, and the said derail switch to be kept locked open when not in use for the interchange of cars. The alignment of the Jackson & Eastern Railway Company's line adjacent to the main line of the Alabama & Vicksburg Railway Company is as shown by the map or diagram Exhibit 'A' hereto. * * * Switch ties to be used in the turn-out will be of white or post oak, of first-class grade, and seven-inch by nine-inch cross section, the installation to be made under competent supervision and in a workmanlike manner, in accordance with the standard practice of the A. & V. Railway Company" (R., --).

The Jackson & Eastern Railway Company was incorporated under Chapter 118 of the Code of 1906 of Mississippi. Section 4079, being a part of Chapter 118 of said Code, is as follows:

"Every railroad corporation organized under the provisions of this chapter shall have and exercise the following powers, rights and privileges, viz.:"

Then follows Section 4096, under which the condemnation proceedings were instituted :

"4096. Seventeenth. To CROSS OTHER RAILROADS, ETC.—To cross, intersect, join, or unite its railroad with any other railroad heretofore or hereafter constructed at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches, and other conveniences, and to exercise the right of eminent domain for that purpose."

Section 184 of the Constitution of 1890 of the State of Mississippi, is as follows :

"Section 184. All railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the State shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with roads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without unnecessary delay or discrimination."

The Constitution and laws of the State of Mississippi do not confer upon the Jackson & Eastern Railway Company and other railroads organized thereunder the power to condemn part of the main line of an existing road, nor has the Jackson & Eastern Railway Company sought by its condemnation proceedings to acquire a portion of the main line of the petitioner. It seeks nothing more than a switch

connection. The Supreme Court of Mississippi has so construed the application of the Jackson & Eastern Railway Company and the laws of Mississippi under which the condemnation proceeding was instituted. Alabama & Vicksburg Railway Company *versus* Jackson & Eastern Railway Company, 95 So. 733; Alabama & Vicksburg Railway Company *versus* Jackson & Eastern Railway Company, 101 So. 553.

The Supreme Court of Mississippi in its opinion on the second appeal found on page 555, 101 So., in referring to the contention of the Alabama & Vicksburg Railway Company, that the Jackson & Eastern Railway Company in its application for condemnation was seeking to acquire a portion of the main line of the Alabama & Vicksburg Railway Company, said:

"Another question presented now, which was also in the former appeal, though not discussed in that opinion, is that the injunction should have been sustained, because the application for the condemnation of the right of way of the appellant, sought to condemn the ownership or fee in the strip of land of appellant's main line for the proposed connection purposes, whereas the law permits only the condemnation of an easement for a connection. We have examined and construed the language used in the application for condemnation, and while the words 'own, occupy and use' said strip of land, rights, privileges and easements above described would seem to indicate that it was an attempt to condemn the ownership in the strip of land to be used for connecting purposes, instead of the condemnation of an easement thereof, yet we think that, taking the application as a whole, the lan-

guage should be construed to mean that only an easement is sought to be condemned. Under the law an easement is all that could be secured by the condemnation proceedings, and we think that that was all that was intended to be condemned, and the judgment of condemnation must necessarily be limited to the acquirement only of an easement for the proposed connection. Therefore, we hold that the application when properly construed seeks only an easement which the appellee, Jackson & Eastern Railway Company, is entitled to under the law."

This court is bound by the construction of the laws of Mississippi and the legal effect of judgments rendered by the State courts, as given by the Supreme Court of the State: *Thornton versus Duffy*, 254 361; 65 L. Ed. 304. *Ward versus Krinsky*, 259 U. S. 503, 66 L. Ed. 1033; *Quong Ham Wah Co. versus Acci. Commission*, 255 U. S. 445; 65 L. Ed. 723; *Farcomb versus Denver*, 252 U. S. 7; 64 L. Ed. 424. *Munday versus Wisconsin Trust Co.*, 252 U. S. 499; 64 L. Ed. 584. *Pennsylvania Railroad Co. versus Towers*, 246 U. S. 6; 62 L. Ed. 117. *Wells, F. & Co. versus Nevada*, 248 U. S. 165; 63 L. Ed. 190.

Every allegation contained in the bill filed by the Alabama & Vicksburg Railway Company in this case with reference to the dangers that would result in the proposed switching connections was specifically denied in the answer of the Jackson & Eastern Railway Company, and the testimony on each item of danger specified was conflicting. The witnesses for the Jackson & Eastern Railway Company were experienced railroad men, and testified from knowledge of conditions after a very thorough investigation. The following witnesses testified on behalf of the Jackson & Eastern Railway

Company: L. W. Duffee (R., —); P. L. Stacker (R., —); F. V. Vick (R., —); S. A. Neville (R., —).

The trial judge viewed the premises. The Supreme Court of Mississippi in its opinion, page 554, 101 So., with reference to the conflict in the testimony, said:

“Many witnesses testified for the appellant Alabama & Vicksburg Railway Company. Their testimony went to establish the fact that the proposed connection would be unreasonable, improper, unduly dangerous to all concerned, and detrimental to both railroads, their employees, and the general public; and that a more reasonable connection could be made at a point a short distance further east on the main line of the appellant Alabama & Vicksburg Railway. Nothing would be gained by setting out in detail the testimony offered by the appellant on the question of fact presented, but it is sufficient to say that it was strong proof against the reasonableness and safety of the connection at the proposed point. The appellee, Jackson & Eastern Railway Company, offered many witnesses who testified positively that the proposed connection was reasonably safe, proper, and not unduly dangerous, and would not be injurious to the railroad or employees nor the general public interests. These witnesses, if believed, established the fact by their testimony that the proposed connection was reasonable and entirely proper. Their testimony appears to be clear and positive on the subject. The Chancellor personally visited the scene of the proposed connection and examined the physical conditions and observed the circumstances and general situation there. This information received by the Chancellor as trier of fact we assume was of considerable value as an aid to him in determining the truth from the conflicting testimony of the witnesses on

the opposite sides of the case, and the Chancellor found the fact to be that the connection sought was reasonable and proper, and dissolved the injunction, from which decree the Alabama & Vicksburg Railway Company now appeal, and appellee cross-appeals. Under the law of the case, all that was left to be tried by the lower court on the new trial was the question of fact as to the reasonableness, etc., of the proposed connection; therefore, the point for our decision on the present appeal is whether or not the finding of fact by the Chancellor is manifestly wrong and should be reversed. We have examined the testimony offered by opposing parties, and after a careful and lengthy consideration of it, we are convinced the finding of the Chancellor was amply supported by the proof, and we see no reason for a reversal of the finding of fact on the question directed by the former opinion to be inquired about by the lower court."

The findings of fact by the State courts in this case will be accepted by this court as conclusive: *Pure Oil Co. versus Minnesota*, 248 U. S. 158; 63 L. Ed. 180. *Ward versus Krinsky*, 259 U. S. 503, 63 L. Ed. 1033.

In its brief on the petition for writ of certiorari the Alabama & Vicksburg Railway Company lays great stress upon a certain petition signed by the employees of the Alabama & Vicksburg Railway Company protesting against the proposed connection. These petitions are referred to as matters of "human interest." We call the court's attention to the fact that the employees of the Alabama & Vicksburg Railway Company got the impression from some source that the Jackson & Eastern Railway Company was seeking by the condemnation proceedings to take from the Alabama &

sborg Railway Company a portion of its main line, and to run its trains over the main line of the Alabama & sborg Railway Company. The original bill filed by A. & V. in this case charges that the Jackson & Eastern ray Company is seeking by the condemnation proceed- to acquire the ownership of a part of the main line of Alabama & Vicksburg Railway Company, and was also ng the right to use the main line into Jackson. We seen from the consideration of the opinion of the Su- e Court of Mississippi that the Jackson & Eastern Rail- Company will acquire no such rights and privileges by ondemnation proceeding. These erroneous contentions e Alabama & Vicksburg Railway Company seem in way to have gotten into the witness room and ma- ly influenced the testimony of its witnesses. L. E. s, a conductor, and one of the principal witnesses of the uma & Vicksburg Railway Company, testified as fol- on cross-examination:

"Q. Did you understand in your testimony that this switching connection would give the Jackson & Eastern the right to use the main track of the Ala- bama & Vicksburg?

"A. Why did they want the connection if they don't expect to use the line of the A. & V.?

"Q. It is your understanding that they will use the line of the A. & V.?

"A. That they would use the A. & V., that is my understanding" (R., —).

urther along in his cross-examination this same witness ed as follows:

"Q. Now let's get back to the junction point. Do you understand that the J. & E. wants to use the track of the A. & V.?

"A. If they don't want to use it, why are they seeking this junction?

"Q. I asked you if it was your understanding that the Jackson & Eastern wanted to use the main line of the A. & V.?

"A. And I answered you by saying if they don't want to use it, why are they seeking this junction?

"Q. Did I understand that you understood that they were going to undertake to run their trains on the A. & V. railroad track?

"A. I think I have answered that question.

"Q. Let me ask you again simply as I can, is it your understanding that the Jackson & Eastern will by its own switch engines and crews run its trains if this connection is made on the A. & V. tracks?

"A. I can't see why they want this connection if they don't want to use the tracks of the A. & V."
(R., —.)

HAS CONGRESSIONAL LEGISLATION WITH REFERENCE TO PHYSICAL CONNECTION OF INTERSTATE RAILROADS SUPERSEDED LAWS OF THE STATE OF MISSISSIPPI DEALING WITH PHYSICAL CONNECTION OF RAILROADS? IN OTHER WORDS, HAS CONGRESS TAKEN ENTIRE CHARGE OF THE FIELD OF PHYSICAL CONNECTION OF RAILROADS ENGAGED IN INTERSTATE COMMERCE?

The following principles are well established by the decisions of this court:

(1) To have the effect of superseding state statutes, it is not sufficient that congressional regulation of commerce in-

les the same field. It must expressly cover the precise subject matter or show a purpose to take legislative possession of the whole field. *Reid versus Colorado*, 187 U. S. 47; 47 L. Ed. 108. *Sinnot versus Davenport*, 22 Howard, 7; 16 L. Ed. 243. *Savage versus Jones*, 225 U. S. 501. *Missouri Railroad Company versus Harris*, 234 U. S. 412; 31 L. Ed. 1377.

(2) The fact that Congress has intrusted to the Interstate Commerce Commission certain national powers in respect to interstate commerce, does not, in the absence of action by it, change the rule as to the authority of the State when Congress has not acted. *Missouri Pacific Railroad versus Larabee Flour Mills Co.*, 211 U. S. 612; 53 L. Ed. 352. *Corpus Juris*, Volume 12, Section 14, page 17.

The petitioner Alabama & Vicksburg Railway Company contends that the second paragraph of Section 3 of the Interstate Commerce Act, as amended by the Transportation Act of 1920 shows that it was the purpose and intention of Congress to supersede all State legislation with reference to physical connection of railroads. This amendment is as follows:

"(3) All carriers engaged in the transportation of passengers or property subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice

any such connecting line in the distribution of traffic that is not specifically routed by the shipper." U. S. Statutes at Large, Vol. 41, page 479.

In addition to the above we call the court's attention to Section 8563, Compiled Statutes of the United States, Edition of 1918, which is as follows:

"Any common carrier subject to the provisions of this act upon application of any lateral branch line of railroad or any shipper tendering interstate traffic for transportation, shall construct, maintain and operate upon reasonable terms switching connection with any such lateral branch line of railroad or private sidetrack which may be constructed connecting with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of same."

This section further provides that if any common carrier shall fail to install and operate such switch

"such shipper or owner of such lateral branch line of railroad may make complaint to the commission as provided in Section 13 of this act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof, and justification and reasonable compensation therefor, and the commission may make an order as provided in Section 15 of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be in force as hereinabove provided for the enforcement of all other orders by the Commission other than orders for the payment of money."

This last mentioned statute has been a part of the interstate commerce act for a number of years, long prior to the transportation act of 1920. This court in the case of *United States versus Baltimore & Ohio Southwestern Railroad Company*, 226 U. S. 14; 57 L. Ed. 104, considered the scope and effect of the above statute. The Interstate Commerce Commission on the application of the Cincinnati & Columbus Traction Company had entered an order directing the Baltimore & Ohio Southwestern Railroad Company to establish switching connections with the road of the said Cincinnati & Columbus Traction Company. Suit was brought by the Baltimore & Ohio Southwestern Railroad Company to set aside this order of the Interstate Commerce Commission. This court, speaking through Mr. Justice Harlan, said, in the above case:

“It will be seen, without much argument, that unless the traction company is a lateral branch line of railroad, the trunk line carriers, the appellees, are not subject to the requirement of the statute so far as the traction company is concerned, the words ‘lateral branch line’ do not refer to what the applicant may become or be made by order of the commission, but to what it already is when it applies. The power of the commission does not extend to order a connection wherever it sees fit, but is limited to a certain and somewhat narrow class of line. The most obvious examples of such lines are those that are dependent upon and incident to the main line—feeders, such as may be built from the mines or forests to bring coal, ore or lumber to the main line of shipment.”

Now the contention is that because Congress has legislated with reference to switch connections between "a certain and somewhat narrow class of line," therefore all State legislation relating to switch connections between railroads engaged in interstate commerce are annulled, and that the State can not now enter the field of forcing physical connections between railroads engaged in interstate commerce. We submit that the decisions of this court, which lay down the general principles which are to guide the court in determining whether or not congressional legislation has superseded State legislation, dealing with interstate commerce and its instrumentalities, make it plain that the congressional legislation referred to above has not superseded the statutes of Mississippi under which the condemnation proceeding was instituted. We refer only to some of the leading cases of this court laying down general principles. *Missouri, K. & T. Railroad Company versus Harris*, 234 U. S. 411; 58 L. Ed. 1378; *Reid versus Colorado*, 187 U. S. 137; 47 L. Ed. 108; *Savage versus Jones*, 225 U. S. 501; 56 L. Ed. 1182.

We call the court's attention to the following language used by this court in the case of *Savage versus Jones*, 225 U. S. 503, 56 L. Ed. 1183:

"But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulations and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has had abundant illustration."

As indicating the mind of Congress in the enactment of the Transportation Act of 1920, on the question of depriving the States of police power over instrumentalities of interstate commerce, we call your honors' attention to the following proviso to Paragraph 17, Section 402, of the Transportation Act of 1920, found on page 477, of United States Statutes at Large, Volume 41:

"Provided, however, that nothing in this act shall impair or affect the right of the State in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

We also call the attention of the court to Paragraph 22 of Section 402, of the Transportation Act of 1920, found on page 478 of the United States Statutes at Large, Volume 41, which reads, as follows:

"The authority of the Commission conferred by Paragraphs 18 to 21, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or sidetracks located or to be located wholly within one State, or of street, suburban or interurban electric railways which are not operated as a part or parts of a general steam railroad system of transportation."

This court in the case of *State of Texas versus Eastern Texas Railroad Company*, 258 U. S. 204, 66 L. Ed. 566, in referring to the scope of the Transportation Act of 1920, said:

"As a whole these acts show that what is intended is to regulate interstate and foreign commerce, and

to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce."

The jurisdiction conferred upon Interstate Commerce Commission by the Transportation Act (Federal Statutes Annotated, 1920 Supplement) is excluded in the case at bar by paragraph (22), page 99, providing "(22) the authority of the Commission conferred by paragraphs (18 to 21) both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks located, or to be located, wholly within one State, or of street, suburban or interurban electric railways, which are not operated as a part or parts of a general steam railway system of transportation." This section is particularly applicable for it applies to the "construction" of "switching tracks located wholly within one State."

Thus the police power of the State under its constitution and statutes in the eminent domain proceedings of rights of way for switch tracks is in no wise affected by the Transportation Act and the authority of the Commission thereunder.

This section (22) is not in conflict with paragraph 3, section 3, but is a limitation upon the powers of the Interstate Commerce Commission touching the construction of switch tracks located wholly within one State.

This limitation is recited and the case differentiated in:

Lake Erie A. & W. R. R. Co. *vs.* Public Utilities Co.,
141 N. E. (Ohio) 847.

wherein the court says:

"While a connection between railroads is the avowed object of the proceeding, this record discloses that the true purpose of this controversy is the desire to share in the coal car supply of the New York Central Railroad. The applicant railroad in its sixty miles of length has, at least, six other connections."

The order of the Interstate Commerce Commission and the opinion of the Court in the above case is based upon the proposition of the effect upon interstate commerce and not the construction of a switch track. The connection there sought was between two main line carriers of their main lines and not a switch connection as here, and both the Commission and the Court, after considering the effect of such connection, held that it would materially affect the interstate commerce and be very injurious to the commerce of the New York Central in the operation of its road and in causing an expense to it of two million dollars.

A switch to be built under condemnation at the expense of the condemnor between two railroads was not involved; and that the jurisdiction of the Commission was not invoked as to such a switch connection is manifested by the fact that there were six connections between those two trunk line carriers within the sixty miles of the length of one of them. One proposition involved in the case of Lake Erie A. & W. Railroad Company *versus* Public Utilities Company, *supra*, was the conflict of jurisdiction between the Interstate Commerce Commission, whose jurisdiction was conceded, and the Ohio Public Service Utilities Commission wherein the court held that where jurisdiction was concurrent, the jurisdiction of the court first obtaining and

exercising jurisdiction was exclusive. On this phase of the case the court said:

"We are confronted with the situation where a jurisdiction voluntarily invoked **HAVING BEEN EXERCISED**, its effect cannot be denied."

It is contended by the petitioner for certiorari in the case at bar that the jurisdiction of the Interstate Commerce Commission was invoked by the Jackson & Eastern Railway Company, but they do not contend that the jurisdiction of the Interstate Commerce Commission was "exercised." The fact is that the Interstate Commerce Commission held that it did not have jurisdiction of the petition filed by the Jackson & Eastern Railway Company on December 10, 1921, as will be seen by a letter addressed to the attorneys of the Jackson & Eastern Railway Company by the Secretary of the Interstate Commerce Commission, of date February 7, 1922, wherein the Secretary said:

"On December 10th, 1921, you filed with the Commission, on behalf of the Jackson & Eastern Railway Company, a complaint against the Alabama & Vicksburg Railway Company under docket No. 13361, in which you pray that the Commission issue an order authorizing, directing and requiring a physical connection between the Jackson & Eastern Railway Company and the Alabama & Vicksburg Railway Company at a point, described in the complaint, east of the Pear River, and also authorizing, directing and requiring the Alabama & Vicksburg Railway Company to permit the use of said portion of its main line from the point of said proposed physical connection to a point on the west side of the Pearl River on Commerce Street in the

city of Jackson, Miss., for the purpose of enabling the Jackson & Eastern Railway Company to run its engines, trains, and cars over the said portion of the main line of the Alabama & Vicksburg Railway.

"You invoke the authority of the Commission under paragraph 9 of section 1, and paragraph 4 of section 3.

"Your complaint has been considered by the Commission, and I am directed to call your attention to the decision of the Supreme Court of the United States in *U. S. versus B. & O. Southwestern Ry.*, 226 U. S., 14, wherein the Court construed paragraph 9 of section 1, the Court said:

"The words 'lateral, branch line' do not refer to what the applicant may become or be made by order of the Commission but to what it already is when it applies. The power of the Commission does not extend to ordering a connection wherever it sees fit, but it is limited to a certain and somewhat narrow class of lines. * * * But here, as we have said, this determination of the Commission that the applicant shall be a branch line is not enough; the applicant must be a branch before it applies. That is the absolute and reasonable condition. That some shippers would be accommodated by a switch connection is not enough.'

"It seems clear that under this provision of the act the Commission is without authority to grant the relief prayed for' " (R., —).

After the receipt of the above communication from the Interstate Commerce Commission, the Jackson & Eastern Railway Company abandoned its petition filed with the Interstate Commerce Commission and the same was thereafter dismissed as admitted by the petitioner while in the case of *Lake Erie A. & W. R. R. Co. versus Public Utilities Com-*

pany, *supra*, the matter was fully heard and decided by the Interstate Commerce Commission.

The petitioner for certiorari also relies upon the case of
Ex Rel. People New York Central Railroad Company
versus Public Utilities Co., 233 N. Y., 113; 135
 N. E., 195,

wherein there was a question of main line, and not switch, connection at issue and in which it was contended that section 1, as amended by section 402 of the Transportation Act (paragraphs 18 and 21), page 99, by (22), *supra*, was controlling, but the Court held that this paragraph did not apply because "the track ordered to be constructed was not a spur, industrial, team, switching or side track, but rather, as stated in the order of the Commission, was a track connection between two roads of relator and the Lehigh Valley and said two roads were also commanded to lay and install such tracks as may be necessary to furnish adequate and convenient interchange of freight between said railroads."

Thus both *Lake Erie, A. & W. R. R. Co. versus Public Utilities Company* and *People ex Rel. New York Central R. R. Co. versus Public Utilities Company*, *supra*, so much relied upon by petitioner in this proceeding, are clearly not applicable to the case at bar. Counsel for petitioner does not cite any decisions of this court, or any other Federal Court, applicable and the foregoing decisions of the State courts are clearly not authority for the position assumed.

The contention that the Jackson & Eastern Railway Company's purpose in the future is to obtain use of the terminal and bridge of the Alabama & Vicksburg Railway Company after it obtains switch connections, is held by the Supreme

Court of Mississippi in this case without any merit in that, future acts, predicated upon the existence of a switch, could not now be considered; and in *Western Union Telegraph Company versus Louisville & Nashville Railroad Company*, 107 Miss., 626; 65 So., 650; where it was contended that in the future the Telegraph Company would use the right of way for other purposes than specified in the condemnation proceedings, it was held that the Court would not consider any such contention in the condemnation proceedings and that, if the judgment in the condemnation proceedings was thereafter used for other purposes, then injunction would lie. This latter case was affirmed by the Supreme Court of the United States, 250 U. S., 362; 63 Law Ed. 1032.

In addition to the decisions of this Court, already cited by us in this brief in support of our contention that the Transportation Act of 1920 did not supersede the statutes of Mississippi with reference to physical connections of railroads, we refer the Court to the following cases:

Norfolk & Western R. R. Co. versus Public Service Co., 82 W. Va., 408; 96 So. Eastern, 62.

Washington & O. D. R. R. Co. versus Royster Guano Co., 122 Va., 397.

Wisconsin Railroad Company versus Jacobson, 179 U. S., 287; 45 Law Ed. 194.

Chicago R. R. Co. versus State, 53 Okla., 712.

As clearly appears from the communication from the Interstate Commerce Commission to the attorneys of the Jackson & Eastern Railway Company, above referred to, the Commission is of the opinion that the Transportation Act of 1920 does not confer jurisdiction upon it to force the

connection herein sought. The contention of the petitioner is that the jurisdiction of the Interstate Commerce Commission is exclusive. It is inconceivable, we submit, that Congress would have conferred exclusive jurisdiction upon the Interstate Commerce Commission of a matter of such local concern. Finally, we submit that even though the Interstate Commerce Commission has authority under the Transportation Act of 1920 over the switch connection between two railroads engaged in interstate commerce, still the States under their police power, have the power, in aid of intrastate commerce, to require two railroads such as the two roads here involved to connect their lines by switch tracks. This Court held in the case of the State of Texas *versus* Eastern Texas R. R. Co., 258 U. S., 204; 66 Law Ed., 566, that the Interstate Commerce Commission had no authority under the Transportation Act to authorize an intrastate railroad to abandon its intrastate business. Now, we submit that the converse of this proposition is true; that is, that the Interstate Commerce Commission has no authority to force switch connections between two intrastate railroads in so far as intrastate business is involved.

We submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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GEORGE B. NEVILLE,
HARDY R. STONE,

Counsel for Jackson & Eastern Railway Co.

MARCH 3, 1925.

(5700)

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FILED

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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1925.

No. 244.

WRIT OF ERROR AND CERTIORARI TO SUPREME
COURT OF MISSISSIPPI

ALABAMA & VICKSBURG RAILWAY COMPANY,
ET ALS., PLAINTIFFS IN ERROR AND PETITIONERS

v.s.

JACKSON & EASTERN RAILWAY COMPANY,
DEFENDANT IN ERROR AND RESPONDENT.

BRIEF ON BEHALF OF DEFENDANT IN ERROR AND
RESPONDENT.

MARCELLUS GREEN,
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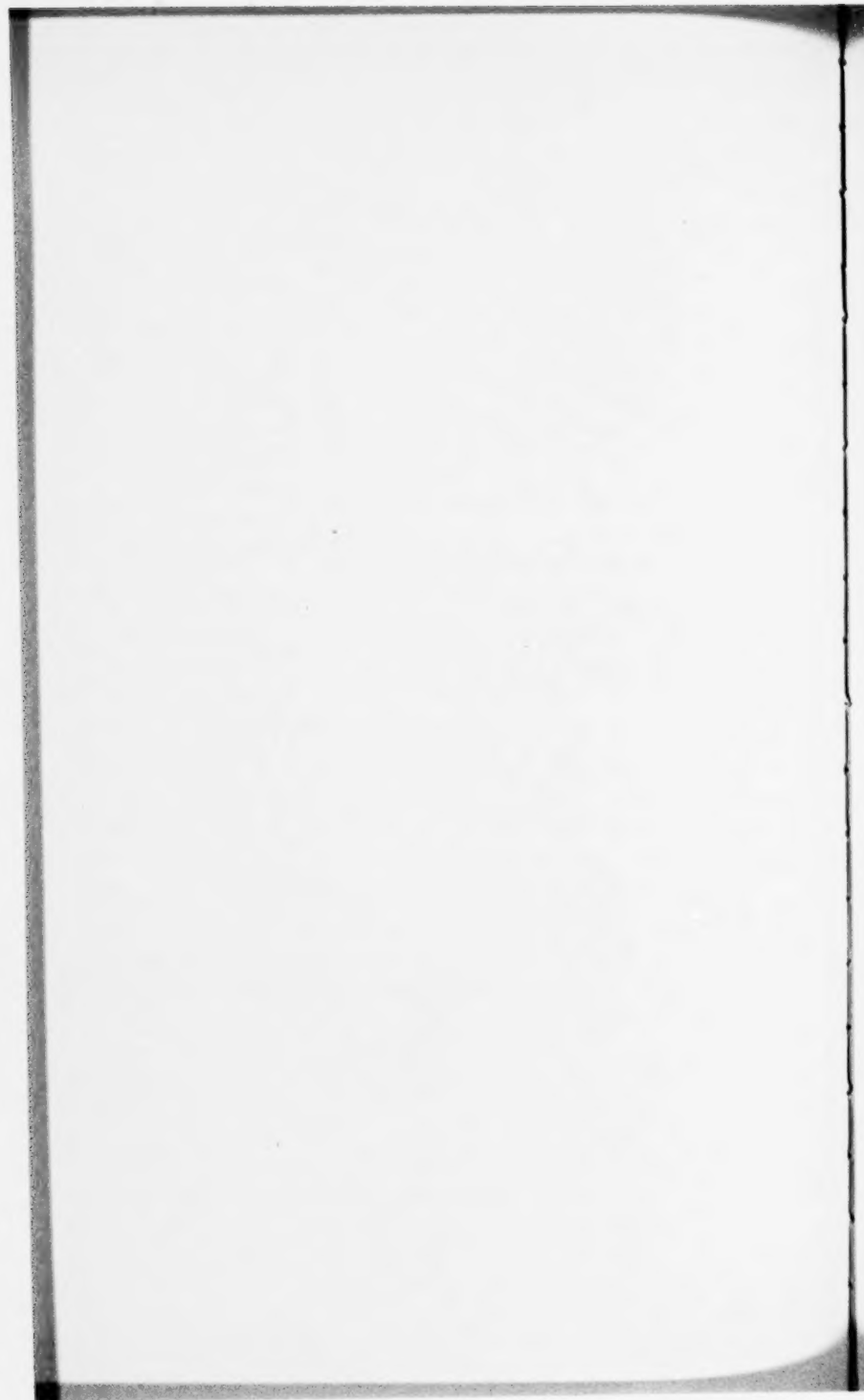
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IN THE
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OCTOBER TERM, 1925.

No. 244.

WRIT OF ERROR AND CERTIORARI TO SUPREME
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ALABAMA & VICKSBURG RAILWAY COMPANY,
ET ALS., PLAINTIFFS IN ERROR AND PETITIONERS

vs.

JACKSON & EASTERN RAILWAY COMPANY,
DEFENDANT IN ERROR AND RESPONDENT.

BRIEF ON BEHALF OF DEFENDANT IN ERROR AND
RESPONDENT.

STATEMENT OF CASE.

IF THE COURT PLEASE:

The Jackson and Eastern Railway Company, an intra-state railroad, chartered by the State of Mississippi, was proceeding to construct its railroad within the State of Mississippi, and, after obtaining a certificate of public

necessity from the Interstate Commerce Commission, (Record 538), desired to make a switch connection with the Alabama and Vicksburg Railway Company, an intrastate railroad, chartered by the State of Mississippi, at a point near the suburbs of the City of Jackson, called "Curan's Crossing," and after applying to the Interstate Commerce Commission for authority to make said switch connection (Record 547), with notice to the Alabama and Vicksburg Railway Company, the Interstate Commerce Commission held it had no jurisdiction to make the order under *U. S. v. B. and O. R. R. Co.*, 226, U. S. 14, (Record 548), and the application was denied.

No objection to the correctness of this decision of the Commission was made by the Alabama and Vicksburg Railway Company, and the Jackson and Eastern Railroad Company acquiesced therein.

Thereupon, under Section 184 of the Constitution of Mississippi of 1890, copied *infra*, and Section 190 of the Constitution of Mississippi of 1890, copied *infra*, and under the Charter of the Jackson & Eastern Railway Company, granted by the State of Mississippi, wherein was embodied Section 4082 of the Mississippi Code of 1906, providing authority to build and operate railroad, as follows:

"To build and construct, and thereafter to use, operate, own sell and enjoy the railroad as specified and defined in the application of the projectors for its creation and organization with one or more tracks, and to construct and operate such branches, spurs and laterals thereto as may be necessary or proper to develop the country through which its main line may extend. Upon the location of branches, spurs and laterals, the company shall file in the office of the

secretary of state a written statement showing the line thereof, and to charge and collect reasonable compensation for the transportation of persons and property on its road."

And Section 4096 of the Mississippi Code of 1906, providing:

"To cross, intersect, join or unite its railroad with any other railroad heretofore or hereafter constructed, at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches, and other conveniences, and to exercise the right of Eminent Domain for that purpose."

The Jackson and Eastern Railway Company proceeded, under Chapter 43, Mississippi Code of 1906, on "Eminent Domain," by applying to the Eminent Domain Court, with notice to the Alabama and Vicksburg Railway Company and other named defendants, to condemn an easement over the right-of-way of the Alabama and Vicksburg Railway Company, as specified in said application, for a switch track connection at the intersection of the Jackson and Eastern Railway Company's track, as located, with the track of the Alabama and Vicksburg Railway Company, at said point. (R., 14-16.)

The application of the Jackson & Eastern Railway Company for condemnation of said switch track connection is as follows:

TO THE CIRCUIT CLERK OF RANKIN COUNTY, MISSISSIPPI:

And now comes the Jackson & Eastern Railway Company, a railroad corporation duly and legally organized under the laws of the State of Mississippi, and makes application for the exercise of eminent domain, pursuant to

Chapter 43 of the Annotated Code of 1906 of Mississippi, and of Section 4096 of said Code, and shows the following, to-wit:

1. That your applicant, the Jackson & Eastern Railway Company, was duly organized under the laws of the State of Mississippi as aforesaid, for the purpose of constructing, maintaining and operating a railroad for public use, and for the conveyance of persons and property from Union, Newton County, Mississippi, to Jackson, in the County of Hinds, and State of Mississippi, and through the Counties of Newton, Scott, Leake, Rankin and Hinds, in the State of Mississippi, and that said applicant's principal place of business is Meridian, Lauderdale County, State of Mississippi.

That the applicant has been granted, by the Interstate Commerce Commission, a certificate of public convenience and necessity, and authority to construct said railroad, as per Docket No. 9 of said Interstate Commerce Commission.

2. That in order for this applicant to construct, maintain and operate its said railroad it is necessary to connect its main line of railroad, as now surveyed and definitely located, with the main line of the Alabama & Vicksburg Railway Company, one of the defendants herein, with a switch turn-out, at a point on the main line of said Alabama & Vicksburg Railway Company, and in the manner as hereinafter described.

3. That the following real property, rights, privileges and easements are sought to be condemned, for the purposes hereinafter stated, to-wit: A strip of land of varying widths, extending from Station 0/00 on the survey enumeration of the applicant, the Jackson & Eastern Rail-

way Company, which 0/00 Station is located on the center line of the Alabama & Vicksburg Railway Company's track 1797 feet East from the first block signal semaphore East of the Alabama & Vicksburg Railway Company's bridge over Pearl River in an easterly direction along the surveyed line of the Jackson & Eastern Railway Company an average distance of 325 feet, the widths of said strip to be condemned are: At Station 0/00 16 feet, being 8 feet on each side of the center line; at Station 0/50 21 feet, being 8 feet on the right and 13 feet on the left side of the center line of the Jackson & Eastern Railway Company's survey; at Station 1/00 26 feet, being 8 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 1/50 27 feet wide, being 9 feet on the right and 18 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2/00 30 feet wide, being 11 feet on the right and 19 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 2/50 35 feet wide, being 15 feet on the right and 20 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3/00 30 feet wide, being 20 feet on the right and 10 feet on the left of the center line of the Jackson & Eastern Railway Company's survey; at Station 3/25 20 feet wide, being all on the right of the center line of the Jackson & Eastern Railway Company's survey; and at Station 3/75 coming to a point on the North right-of-way line of the Alabama & Vicksburg Railway Company's said survey, containing two hundred and thirty-two thousandths (.232) acres, and lies in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 14, Township 5, North Range 1 East, Rankin County, Mississippi, which said center line of the proposed track of

the applicant, the Jackson & Eastern Railway Company, is more fully shown by a diagram hereto attached, marked EXHIBIT "A," and made a part hereof.

The connection which the applicant herein seeks to acquire by condemnation proceedings, with the main line of the defendant, the Alabama & Vicksburg Railway Company, is to be a No. 9 turn-out, and the use of 75 lb. rail, of the same character and design which is now in use on the main line of the Alabama & Vicksburg Railway Company at the point of connection. The said connection is to be made as shown by said diagram, EXHIBIT "A" hereto, and is to be located so that the point of the left hand frog will be 1867 feet East of the first block signal semaphore situated on the main line of the Alabama & Vicksburg Railway Company West of the Curran's Crossing and East of Pearl River; the said turn-out to operate so that cars may be interchanged between the said Alabama & Vicksburg Railway Company and this applicant, and the said turn-out to be protected by a lock, and the main line of the said Alabama & Vicksburg Railway Company to be further protected by a derail switch, which is to be placed on the rail of the applicant at a point one hundred feet beyond the point of the frog of the connecting turn-out on the North rail of the applicant's track, and the said derail switch to be kept locked open when not in use for the interchange of cars. The alignment of the Jackson & Eastern Railway Company's line adjacent to the main line of the Alabama & Vicksburg Railway Company's is as shown by the map or diagram EXHIBIT "A" hereto. The crown of the said embankment of the applicant to be not less than 16 feet wide on top, with side slopes of $1\frac{1}{2}$ feet horizontal to one foot vertical. The grade of the finished Jackson & Eastern Railway

Company's track will coincide with the grade on the main line of the Alabama & Vicksburg Railway Company through the turn-out and beyond the switch ties, and continue as a 0.0 grade to Station 3/00, and from thence the grade will be a minus 0.3 of 1% for a distance of 1700 feet.

There will be 1033.3 cubic yards of earth fill in the Alabama & Vicksburg Railway Company's fill which will come within the theoretical section of the proposed fill of the applicant, and there will be 85.2 cubic yards of slag ballast now under the Alabama & Vicksburg Railway track which will come within the ballast section of the applicant's proposed connection. Ballast of stone, gravel or slag will be placed $1\frac{1}{2}$ feet deep below the top of the cross-ties of the Jackson & Eastern Railway's track throughout that portion where drainage of the Alabama & Vicksburg Railway Company's track shall be affected by earth ballast, namely, from Station 0/00 to Station 2/00, on the Jackson & Eastern Railway Company's survey enumeration.

The switch ties to be used in the turn-out will be of White or Post Oak, of first class grade, and 7"x9" cross section. The installation to be made under competent supervision, and a workmanlike manner, in accordance with the standard practice of the A. & V. Railway Company.

The applicant further shows that the lands, easements, rights and privileges above described are owned by the defendant, the Alabama & Vicksburg Railway Company, a corporation organized under the laws of the State of Mississippi, and owning and operating a line of railroad, as a common carrier, from Meridian, Mississippi, to Vicksburg, Mississippi, which line of railroad extends through Rankin County, Mississippi.

Applicant further shows that the defendant, the Canal Commercial Trust & Savings Bank, is a corporation organized under the laws of the State of Louisiana, and domiciled and doing business in New Orleans, Louisiana, and that its postoffice address is New Orleans, La.; and that the defendant, Felix E. Gunter, is a non-resident of the State of Mississippi, that he is a resident of the State of Louisiana, and that his postoffice address is New Orleans, La., c/o Canal Commercial Trust & Savings Bank; that the said Canal Commercial Trust & Savings Bank and Felix E. Gunter are named as Trustees in that certain mortgage or deed of trust executed by the said defendant, the Alabama & Vicksburg Railway Company, on March 23, 1921, to secure the First Mortgage Bonds issued by the said Alabama & Vicksburg Railway Company on April 1, 1921, for \$4,000,000.00, which said deed of trust or mortgage conveys to said Trustees, to secure said bonds, the property, rights, privileges and easements herein sought to be condemned.

This applicant further states and shows that the said First Mortgage Bonds issued by the defendant, the Alabama & Vicksburg Railway Company, dated April 1, 1921, are now owned by various corporations, whose names and postoffice addresses are unknown to this applicant.

4. Your applicant would further show that the public use for which the strip of land, rights, privileges and easements hereinabove described, is for a right-of-way for a switch track and the connection of said switch with the main line of the defendant, the Alabama & Vicksburg Railway Company at the point above described; and your applicant further shows that it is necessary for it to own, occupy and use said strip of land, rights, privileges and

easements above described, in order properly to conduct its business as a common carrier, for which purpose it was organized.

5. That your applicant has been, and still is, unable to agree with the defendants herein as to the compensation to be paid to them, and that the defendant, the Alabama & Vicksburg Railway Company has refused and declined to permit this applicant to connect with its main line in the manner as herein described, and that your applicant has not been able to obtain from the defendants the right, privileges and easements herein sought to be condemned.

6. Your applicant further shows that it is its intention, in good faith, to make the connection with the main line of the said Alabama & Vicksburg Railway Company in the manner and at the point herein described.

WHEREFORE, your applicant prays that such steps be taken for the condemnation of said lands, rights, privileges and easements, for the purposes aforesaid, as are required by Chapter 43 and Section 4096 of the Annotated Code of 1906 of Mississippi.

And as in duty bound your applicant will ever pray.

JACKSON & EASTERN RAILWAY CO.

APPLICANT.

Thereupon, the Alabama and Vicksburg Railway Company, with its Trustees for bondholders filed a Bill in the Chancery Court of Lauderdale County, Mississippi, (Record 1-13), to enjoin the condemnation proceedings, and a preliminary injunction was granted. (Record 17.)

The gravamen of the Bill of Complaint is, (a) That

the right-of-way and road bed sought to be condemned is the "private property" of the Alabama and Vicksburg Railway Company, not subject to condemnation by Eminent Domain proceedings, (Record 2), and that the Eminent Domain statutes, if construed to justify condemnation proceedings of this "private property", violated the State Constitution and the 14th Amendment to the Federal Constitution.

The bill avers that under said Section 4096, railroad companies shall have the right to cross, intersect, join or unite its road with any other road heretofore or hereafter constructed at any point on their route, and upon the ground of any other railroad company, with proper turn-outs, sidings, switches, and other conveniences, and to exercise the right of Eminent Domain for that purpose, (R. 4), and after reciting said Section 4096, the Bill avers that:

"The complainants do not and will not object to the defendant being given all the right it may have under its charter as granted by Mississippi Code of 1906, Section 4096, at a proper and reasonably safe place for the junction or uniting of the two railroads, but as will be shown hereafter the point of the junction sought by the defendant in its Eminent Domain proceedings is an entirely improper and eminently dangerous one for the junction or uniting of two railroads. (Complainants are advised and insist that said Code, Section 4096, does not confer authority on defendant to condemn complainant's right-of-way longitudinally or give defendant the benefit or use of complainant's track facilities) (Record 4-5), x x x "Complainants recognize the defendant's rights under Section 184 of the State Constitution, and as hereinbefore stated, will not object to an intersection or connection of the two railroads, if made at a suitable

and not dangerous place. The Complainant, Alabama and Vicksburg Railway Company, will be ready and willing when a connection or intersection is made of its road with defendant's road, to receive and transport defendant's passengers, tonnage and cars, loaded or empty, without unnecessary delay or discrimination, upon payment by the defendant, to the Alabama and Vicksburg Railway Company of just and reasonable compensation for such services as the latter company may render in so doing."

The Bill then avers that the point of the proposed junction was not a suitable and proper place; and, further avers, (Record, p 12), that the exclusive right to compel connections and the use of the terminal facilities and other property by and between railroads engaged in interstate commerce, is vested, by Section 3, Paragraph 14, of the Interstate Commerce Act, as amended by the Transportation Act, in the Interstate Commerce Commission which has exclusive jurisdiction of the proposed switch connection.

The Bill was demurred to, (Record 18), because it does not show that complainants are entitled to relief prayed for, or to any relief, and no equity shown, and a motion was made to dissolve the preliminary injunction because the Bill does not entitle complainants to the injunction, and that it was improvidently made, and there is no Equity in complainant's Bill.

This motion and demurrer were heard by the Chancellor, the demurrer was sustained, and the injunction dissolved, and an appeal was taken to the Supreme Court from the decree sustaining the demurrer, and upon appeal, the Supreme Court held, (Record, p. 28), that the Bill did not entitle to an injunction, except upon this proposition (Record p. 35), that:

"The right to make a physical connection by one railroad with that of another must be reasonably exercised. In other words, the point of junction must be selected with due care with reference to the interest and welfare of both railroads, and with reasonable consideration for safety and other rights of the general public, as well as the two railroad companies. Under the facts alleged in the Bill, as above set out, we think the complainant had a right to resort to a Court of Equity to have this question determined, as it could not raise the question in the Eminent Domain proceedings, as has been decided by this court in the case of *Vinegar Bend Lumber Company v. Oak Grove and G. R. Co.* 89 Miss. 84; 43 Southern, 292. In other words, in this case, the Court construed the Statute of Eminent Domain and adjudicated that the only question that could be decided in that proceeding was the amount of damages. That the Court could not decide the right of the plaintiff in such proceedings to institute the proceedings, nor could any other question be raised than that of the amount of damages, and that the circuit court on appeal from the judgment of the eminent domain court had no greater right or jurisdiction than the eminent domain court had. It was also decided that equity had jurisdiction and that it was the court of exclusive jurisdiction in all other cases than the assessment of damages.

"We think it certainly could not be that one railroad company can alone select a place of junction regardless of circumstances or conditions. It has the right to intersect such railroad or cross it whenever the conditions are such that it may do so without endangering unduly the public safety, or the rights or interests of the other railroad company considered with reference to the feasibility of the proper junction at a more reasonable point, having due regard

to the circumstances, the interests of the two railroads, and that of the general public." (R. 35.)

Thereupon, for these reasons, the decree dissolving the injunction was reversed, and the case remanded to be proceeded with in the Chancery Court.

After the Supreme Court delivered this opinion, a Suggestion of Error was filed by the Jackson and Eastern Railroad Company, (Record 36-52), which was overruled.

Upon remand to the Chancery Court, the Bill was answered, and a large amount of testimony, *pro* and *con*, was taken to establish whether the proposed junction at the point named in the application for condemnation was a reasonably safe place for a junction, or, whether, as contended for by the Alabama and Vicksburg Railway Company and some of its witnesses, there was a proper place about two and one-half miles east of the place named in the application for condemnation, and much conflicting evidence was introduced, under the rule prescribed by the opinion of the Supreme Court.

This was upon a question of fact only, namely, the reasonableness of the place for the junction for the proposed switch connection.

The Chancellor, upon hearing the witnesses orally, and upon a personal examination of the premises, held that the place named in the application was a safe place for the junction, and dissolved the injunction.

The Alabama and Vicksburg Railway Company appealed to the State Supreme Court, and this decree of the Chancellor, *on the facts*, was affirmed, and, in response to the contention by the Alabama and Vicksburg Railway Company that the application for condemnation sought

to condemn the fee simple title in the property of the Alabama and Vicksburg Railway Company, the Supreme Court (Record 677-680) construed the whole of the language of the application, and held (R. 680) that:

"Under the law an easement is all that could be secured by the condemnation proceedings; and we think that was all that was intended to be condemned, and the judgment of the condemnation must necessarily be limited to the acquirement only of an easement for the proposed connection. Therefore, we hold that the application, when properly construed, seeks on (only) an easement which the appellee, Jackson and Eastern Railway Company is entitled to under the law."

Thus, the Supreme Court construed the pleading shown by the application to call for an *easement* only, and not a fee, and that the judgment of condemnation, under the Eminent Domain Statute, prescribed by Section 1867, Code of 1906, wherein the form of the judgment is set forth, would only be for an easement, and thus the Mississippi Supreme Court has construed the pleading, and interpreted the pleading under this Mississippi Statute, and this interpretation will be followed by this Court.

The Constitution of Mississippi, 1890, provides:

"Section 190. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use; and the exercise of the police powers of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe upon the rights of individuals or general well-being of the state."

Section 184, Constitution of 1890, p. 87, Miss. Code of 1906, provides:

"All railroads which carry persons or property for hire shall be public highways and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the state shall have the right to construct and operate a railroad between any points within this State, and to connect at the state line with roads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and all railroad companies shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without unnecessary delay or discrimination."

Chapter 43 of the Code of 1906 of Mississippi on Eminent Domain, by Sections 1854, 1855, 1856, 1857, 1858, 1859, 1862, 1863, 1864, 1865, 1866, 1867 and 1871, provides:

"1854. Any person or corporation having the right to condemn private property for public use shall exercise that right as provided in this chapter, and not otherwise, except as specified in the chapter on 'landings,' 'mills and milldams,' and 'roads, ferries and bridges'."

"1855. A special court of eminent domain is created to consist of a justice of the peace and a jury which shall have and exercise the jurisdiction and powers herein enumerated."

"1856. How court organized, etc.—When any person or corporation having the right so to do shall desire to exercise the right of eminent domain, he or it shall make application therefor in writing, and the owners of the property sought to be condemned and mortgagees, trustees, or other persons having an interest therein or a lien thereon, shall be made de-

defendants thereto, which shall state with certainty the right and describe the property sought to be condemned, showing that of each defendant separately. The application shall be presented to the clerk of the circuit court of the county, who shall indorse thereon his appointment of a competent justice of the peace of the county in which the property, or some part thereof, is situated, to constitute, with a jury, the special court of eminent domain; and he shall fix the time and place in the county for the organization thereof."

"1857. (1682) The same; further duties of the circuit clerk.—The circuit clerk shall issue a summons directed to the sheriff of the county, commanding him to summon the defendants and the justice of the peace designated by him to be and appear at the time and place named; the justice to preside over the special court and the defendants to protect their rights as against the applicant; and the clerk shall, in the presence of the clerk of the chancery court and the sheriff, who are required to attend, draw from the jury box of the circuit court of the county the names of eighteen jurors to serve as such in the special court; and the clerk shall issue a venire facias to the sheriff, commanding him to summon the jurors as drawn to appear at the time and place designated. (See Par. 2719.)"

"1858. (1683) Justices and jurors to assemble, etc.—The sheriff shall execute the said summons and venire facias, and make due return thereof to the justice, at the time and place fixed, and the justice and jurors so summoned shall attend at such time and place; and then and there the application, with the clerk's indorsements thereon, showing his acts in the premises, shall be filed; and the sheriff shall return and file the process issued to him, with indorsements showing how he shall have executed the same;

and he shall also file an alphabetical list of the jurors drawn and summoned."

"1859. (1684) Record to be kept; sheriff to attend.—The justice of the peace shall keep, in writing, a complete record of all the court's proceedings. The sheriff, by himself or deputy, shall attend the court and execute its process."

Section 1862 of the Code of 1906 of Mississippi regulates the organization of the jury, and Section 1863 provides the oath to be taken by the jurors. Section 1864 of the Code of 1906 of Mississippi is as follows:

"1864. (1869) Evidence may be introduced, etc.—Evidence may be introduced by either party before the jury, under the direction of the justice, and the jury shall, unless the parties consent to the contrary, go to the premises, under the charge of the justice and the sheriff, and view the property sought to be condemned and its surroundings, and may examine and measure the same, after which, either party may, by himself or counsel, or both, argue the cause."

Section 1865 prescribes the instruction to be given by the presiding justice:

"1865. (1690) The Justice's Instruction.—The justice shall instruct the jury, in writing, in the following words: 'The defendant is entitled to recover damage in this cause, and it devolves on you honestly and impartially to estimate the sum thereof, according to the evidence adduced on the trial, the weight and credibility of which you are the sole judges. The defendant is entitled to due compensation, not only for the value of the property to be actually taken as specified in the application, but also for damages, if any, which may result to him as a consequence of the taking; and you are not to deduct therefrom any thing on account of the supposed

benefits incident to the public use for which the application is made.' The instruction shall be signed by the justice, be filed, and become a part of the record."

Section 1866 prescribes the form of the verdict of the jury, and Section 1867 prescribes the form of the judgment.

Section 1871 of Chapter 43 of the Code of 1906 of Mississippi is as follows:

"1871. (1696) Appeals.—Every party shall have the right to appeal to the circuit court from the finding of the jury in the special court by executing a bond with sufficient sureties, payable to his adversary, in a penalty of three hundred dollars, conditioned to pay all costs that may be adjudged against him, which bond shall be given within twenty days after the rendition of the verdict, and may be approved by the justice. If the appeal be by the defendant, it shall not operate as a supersedeas, nor shall the right of the applicant to enter in and upon the land of the defendant and to appropriate the same to the public use be delayed. Upon appeals, the issues shall be tried de novo in the circuit court, which shall try and dispose of it as other issues, and enter all proper judgments."

Plaintiff in Error sued out a writ of error from this Court to the Supreme Court of Mississippi to reverse this decision, the writ being granted to and by the Chief Justice of that Court. (R. 691, 698).

After the record was filed in this Court plaintiff in error petitioned this Court for a writ of certiorari, which was heard on briefs and its consideration postponed until the merits were heard.

BRIEF.

POINT 1.

This writ of error should be dismissed, and the petition for certiorari should be denied, because there is no Federal question involved, in that,

(a) The only State Statutes challenged are those arising under Sections 184 and 190, Const. Miss. 1890, and Chapter 43, Miss. Code of 1906 on "Eminent Domain," and Chapter 118, Code of 1906, giving railroads the right to join switch tracks under Eminent Domain proceedings, and as being contrary to the powers of the Interstate Commerce Commission under the Transportation Act of 1920, and the 14th Amendment. It is settled by the decisions of this Court that the power of Eminent Domain is a non-delegable police power of the sovereign State, and that it extends to railroad switch tracks of railroads engaged in interstate commerce. *Georgia v. Chattanooga*, 264 U. S. 472, 68 L. Ed. 796; *West & Atl. R. R. Co. v. Ga. Pub. Serv. Com.* 267 U. S. 493, 69 L. Ed. 753. See particularly *State ex rel. v. Seaboard Air Line*, 104 So. (Fla.) 602.

(b) The property of a railroad company can be subjected to the eminent domain power of the State. Cases *supra*.

The Bill expressly avers that under the Constitution and Statutes of the State of Mississippi the proposed switch connection can be made, that no objection by the Alabama and Vicksburg Railway Company was or would be made to the connection at a proper point, but averring that the proposed point of junction was an improper place—thus, on the face of the bill, the Alabama and Vicksburg

Railway Company admits that if the proposed place of junction is a proper place, that the Jackson and Eastern has a right to make a switch connection at that point, and that the Alabama and Vicksburg Railway Company has no objection to make thereto.

Thus the crux of the objection is as to the place—a question of fact—and no Federal question could arise where the right was conceded to do the act under the State Statutes at the proper place; and the Court directed a hearing on the evidence and a finding on this question, and this was done; and this is the finding now here complained of.

(c) The Jackson & Eastern, before commencing this Eminent Domain proceedings, made application to the Interstate Commerce Commission to order this *switch* connection, and the Commission ruled that, under the decision of this Court, in *U. S. v. B. & O. S. W. R. R.* 226, U. S. 14, construing paragraph 9 of Section 1 of the Transportation Act, it had no jurisdiction to make an order as to *switch* tracks.

No complaint of this order of the Commission was made by the Alabama & Vicksburg Railway Company, and it was acquiesced in by the Jackson & Eastern, and the denial by the Interstate Commerce Commission of jurisdiction, and the failure of the Alabama & Vicksburg Railway Company, to complain of this order, now precludes the Alabama & Vicksburg Railway Company from contending, in the State courts, that the Interstate Commerce Commission had exclusive jurisdiction under the Transportation Act of 1920.

(d) The proceeding to condemn an easement for the building of a switch track between two domestic corporations, state carriers, under the statutes of the state, does

not come within the jurisdiction of the Interstate Commerce Commission under the Transportation Act. *U. S. v. B. & O. & S. W. R. R. Co.*, 226, U. S. 14; *West. & Atl. R. R. Co. v. Ga. Pub. Serv. Com.* 267, U. S. 493, *supra*, where, on page 497, the Court says:

"It seems to be the contention of the company that since 85 per cent of the business done on the side-track is interstate commerce, the power to order its establishment or abandonment is vested in the Interstate Commerce Commission and that the State Commission is without authority in the premises. Such a claim is in the teeth of the Transportation Act of February 28, 1920, 41 Stat. at L. 456, Chap. 91, Sec. 402, P. 22, Comp. Stat. Sec. 8563, Fed. Stat. Ann. Supp. 1920, p 96, which provides that the authority of the commission conferred by Sec. 402 over the extension or the abandonment of interstate railway lines shall not extend to the construction of spur, industrial or side tracks."

(e) The construction of the pleading as to the issues raised, and as to the proper judgment to be rendered thereon, under the State Statute, Section 1867, Code of 1906, will be followed by this Court. *Farncomb v. Denver*, 252 U. S. 764, and, hence, the interpretation by the Supreme Court that an easement is all that the pleadings called for and for which judgment in the eminent Domain Court, under the statute, could be awarded, will be followed by this Court.

(f) The attack must be upon the invalidity of the statute and not upon the opinion of the Supreme Court. *Live Oak Water Users Association v. Railroad Commission*, U. S. Sup. Ct. Advance opinion, 1925-6, page 176:

(g) "Where the State Court has decided a local question adequate to support its judgment, this court

Before the filing of the condemnation proceedings the Jackson & Eastern Railway Company filed an application to the Interstate Commerce Commission praying for an order directing and requiring physical connection on the part of the applicant with the Alabama & Vicksburg Railway Company at a point east of Pearl River, and also directing and requiring the Alabama & Vicksburg Railway Company to grant the applicant the right to use that portion of the main line of the Alabama & Vicksburg Railway Company between said point of connection and a point in the City of Jackson. This application was filed with the Interstate Commerce Commission on December 10th, 1921. (Record 597-599.)

On February 7th, 1922, the Secretary of the Interstate Commerce Commission wrote to the attorneys for the Jackson & Eastern Railway Company with reference to the above application from which this language appears:

“Your complaint has been considered by the Commission, and I am directed to call your attention to the decision of the Supreme Court of the United States in *U. S. v. B. & O. S. W. Railroad*, 226, U. S. 14, wherein the Court construes paragraph 9 of Section 1.” (Record 547-549.)

After quoting from the opinion of this Court in the above styled cause the Secretary of the Interstate Commerce Commission stated:

“Upon this statement of facts the Commission would apparently have no jurisdiction to grant the relief prayed for. Under all circumstances the Commission has thought best to bring the above facts and statements of law to your attention in order that your company might be fully advised as to the Commission's lack of power to grant the relief prayed

for, and so as to enable you, if so desired, to make such other arrangements for the construction or operation of the road as might appear to be desirable. Under the circumstances above outlined it is assumed that you will request the Commission to dismiss the complaint without prejudice."

Subsequent to the receipt of this letter, the eminent domain proceedings were instituted. There was never any hearing on the application made to the Interstate Commerce Commission and it was finally dismissed.

The attorneys for the plaintiffs in error and petitioners in their brief filed in this Court make no reference to the Act of June 18th, 1910, Chapter 307, Section 7, 26 Statutes at Large, 539, but contend that Section Three (3), Paragraphs Three (3) and Four (4) of the Transportation Act of 1920 vested in the Interstate Commerce Commission exclusive jurisdiction of track connections between interstate carriers. These sections are as follows:

"(3) All carriers engaged in the transportation of passengers or property subject to the provisions of this Act, shall according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

"(4) If the Commission finds it to be to the public interest and to be practicable without substantially impairing the ability of a carrier owning or en-

titled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main line track or tracks for a reasonable distance outside of such terminal of any carrier or carriers on such terms and for such compensation as carriers affected may agree upon, or in the event of a failure to agree, as the Commission may fix, as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings."

Before examining the cases cited in support of this contention it might be well to refer to some of the principles announced by this Court affecting the question now under discussion. This Court in the case of *Missouri K. & T. R. R. Co. vs. Harris*, 234 U. S. 411, 58 Lawyer's Edition, 1378, said:

"These cases recognize the established rule that a state law enacted under any of the reserved powers—especially (419) if under the police power—is not to be set aside as inconsistent with an Act of Congress, unless there is actual repugnancy, or unless Congress has, at least, manifested a purpose to exercise its paramount authority over the subject. The rule rests upon fundamental grounds that should not be disregarded. In *Reid v. Colorado*, 187, U. S. 137, 148, 47 Law. Ed. 108, 114, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506, the court, speaking by Mr. Justice Harlan, said: 'It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the state law is but the

exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' *Sinnot v. Davenport*, 22 How. 227, 243, 17 L. Ed. 243, 247.' In *Savage v. Jones*, 225 U. S. 501, 533, 56 L. Ed. 1182, 1194, 32 Sup. Ct. Rep. 715, the court said: 'When the question is whether a Federal act over-rides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect, the state law must yield to the regulation of Congress within the sphere of its delegated power (citing cases). But the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal Legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State.' "

The same principle is announced by this Court in the case of *Reid v. Colorado*, 187, U. S. 138, 47 Lawyers' Edition 110, *Savage v. Jones*, 225 U. S. 503, 56 Lawyers' Edition 1183, *Sinnot v. Davenport*, 22 How. U. S. 227, 16 Lawyers' Ed. 254.

The following provision found in Section 17, Section 402 of the Transportation Act of 1920 shows that it was not the intent of Congress to supersede the exercise by the state of its police power in the matter involved in this case, to-wit:

. . . it cannot be surrendered, and if attempted to be contracted away, it may be resumed at will . . . it is superior to the property rights . . . and extends to all property within the jurisdiction of the state, . . . to lands devoted to railroad use."

We also refer the Court to the case of *Grand Trunk Railway Company v. Michigan Railroad Company*, 231 U. S. 457, 58 Lawyers' Edition 311.

In the case of *Missouri P. R. Company v. Larabee Flour Mills*, 221 U. S. 613, 53 Lawyers' Edition 352, this Court said :

"Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the Commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the Commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts. Until then the authority of the state in merely incidental matters remains undisturbed. In other words, the mere grant by Congress to the Commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens. Running through the entire argument of counsel for the Missouri Pacific is the thought that the control of Congress over interstate commerce, and a delegation of that control to a commission, necessarily withdraws from the state all power in respect to regulations of a local character. This proposition cannot be sustained. Until specific

action by Congress or the Commission, the control of the state over these incidental matters remains undisturbed."

The cases mainly relied on by the plaintiffs in error and petitioners are: *Lake Erie A. & W. Railroad Company v. Public Utilities Commission*, 141 Northeastern 847; *People ex. rel. New York C. R. R. Co. v. Public Service Commission*, 233, N. Y. 113, 135 Northeastern 195.

In the case of *Lake Erie A. & W. Railroad Company v. Public Utilities Commission*, *supra*, the Interstate Commerce Commission assumed jurisdiction which was first invoked by the railroad company, and the Interstate Commerce Commission, after a full hearing denied the application upon grounds affecting both inter and intrastate commerce. In this material respect this case differs from the case at bar. The Interstate Commerce Commission in the case cited assumed and exercised jurisdiction. That the Supreme Court of Ohio regarded this fact as controlling is evident from the following statement contained in its opinion:

"We are confronted with the situation, where a jurisdiction voluntarily invoked having been exercised, its effect cannot be denied."

The case of *People ex. rel. in New York C. R. Company v. Public Service Commission*, *supra*, involved the authority of the State Commission under Section 35, Public Service Law (Consol.) Chapter 487, amended by Chapter 637, Laws of 1920, of the State of New York. Subdivision "D" of this Act provides that:

"Every common carrier as such, is required to receive from every other common carrier, at a connecting point freight cars of proper standard," etc.

The order of the Public Service Commission involved in this case required the New York Central Railroad Company and the Lehigh Railroad Company to make track connections between their main lines in the City of Batavia. The main lines of these two railroads were from one-half to one mile apart in the City of Batavia.

The Court of Appeals of New York in its opinion in this case said:

"The City of Batavia is not a connecting point between the two roads; each road maintains its separate freight and passenger stations. . . . The order of the Commission requires track connections to be laid and maintained by the two roads in the City of Batavia, to permit interchange of freight destined for consignees in said City or to be shipped therefrom, and tariff schedules to be filed for service to be rendered in such inter-change. The amendment of the Act of 1920 was ineffectual to enlarge the powers of the Public Service Commission."

After deciding that the state law did not grant to the Public Service Commission the power to force a connection of the two railroads so situated at Batavia, the judge who wrote the opinion proceeded to discuss the effect of the Federal Transportation Act of 1920. One of the judges concurred on the first ground stated in the opinion; that is, the lack of authority on the part of the Public Service Commission under the state law to compel a connection at a place which was not a "connecting point." We call the Court's attention to the fact that the Court of Appeals of New York in this case did not refer to Paragraph 17, Section 402, of the Transportation Act. Evidently its attention was not called to this part of the Transportation Act of 1920. The principles announced in the opin-

ion touching the effect of the Transportation Act of 1920, we submit, were not in harmony with the principles announced by this Court in numerous cases heretofore cited by us.

At the end of the opinion of the Court on page 1077, 22 A. L. R., it is stated that a petition for a writ of certiorari was denied by the Supreme Court of the United States, March 13th, 1922. The publishers of the American Law Reports have notified us that this was an error.

The remaining cases discussed in the brief on behalf of plaintiffs in error and petitioners under the head of

"Issue No. 1" involve matters which have been clearly committed by Congress to the exclusive jurisdiction of the Interstate Commerce Commission, and we submit that the principles announced in these cases do not conflict with the principles for which we contend in this case.

PLAINTIFFS' "ISSUE NO. 2," BRIEF P. 35.

The contention here is that the condemnation statutes of Mississippi are in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, because the application for condemnation failed to declare clearly the precise property and the precise interest therein sought to be condemned. We have set out in this brief the state statutes under which the condemnation proceedings were instituted. In view of the fact that this Court has so often decided that the condemnation proceedings under similar statutes were not in violation of the Constitution of the United States, we do not think it necessary to enter into any lengthy discussion of this contention.

"Necessity for taking.—In condemnation proceed-

ings there is no fundamental right secured by this clause to have the questions of compensation and necessity both passed upon by one and the same jury. In many States the question of necessity is never submitted to the jury which passes upon the question of compensation. It is either settled affirmatively by the legislature or left to the judgment of the corporation invested with the right to take property by condemnation. The question of necessity is not one of judicial character, but rather one for determination by the lawmaking branch of the Government. Constitution of the United States, Revised and Annotated (1924), p. 690.

"*Backus v. Union Depot Co.*, 169 U. S. 568; *Sears v. Akron*, 246 U. S. 242; *Bragg v. Weaver*, 251 U. S. 57; *Rindge Co. v. Los Angeles*, 262 U. S. 700; *Milheim v. Moffat*, 272 U. S. 710."

"Mode of assessing compensation.—In condemnation proceedings there is due process of law when provision is made for an inquiry as to the amount of compensation in some appropriate way before some properly constituted tribunal. It is within the power of the State to provide that the amount shall be determined in the first instance by commissioners, subject to an appeal to the courts for trial in the ordinary way, or it may provide that the question shall be settled by a sheriff's jury, as it was constituted at common law, without the presence of a trial judge." *Backus v. Union Depot Co.*, 168 U. S. 569; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 694. Constitution of United State, Revised and Annotated (1924) p. 691.

With reference to the contention that the application for condemnation failed to declare clearly the precise property and the precise interest therein sought to be condemned, the plaintiffs in error and petitioners in their

brief do not set out the entire application, but only certain parts which they have separated from the context. A complete answer to this contention is a reading of the entire application which we have copied in the first part of this brief. The Supreme Court of Mississippi has construed this application in this case in 101 So. 533. It held that only an easement was sought to be condemned by the Jackson & Eastern Railway Company in the condemnation proceedings. The Court said:

“Under the law an easement is all that could be secured by the condemnation proceedings; and we think that was all that was intended to be condemned, and the judgment of condemnation must necessarily be limited to the acquirement only of an easement for the proposed connection. Therefore we hold that the application, when properly construed, seeks only an easement which the appellee, Jackson & Eastern Railway Company, is entitled to under the law.”

This is the construction of the pleadings by the State Court in deciding the issue involved, and this Court accepts the decision of the State Court in its construction of the pleadings under state practice and of the effect of the State Statute providing for judgment on such pleading. *Farncomb v. Denver*, 252 U. S. 6. Under the interpretation of Chapter 43, Code of 1906 on Eminent Domain by the State Supreme Court in the Vinegar Bend case cited and relied on in this case, every legal question arising in or defense to a proceeding before an Eminent Domain Court, other than the amount of damages for the taking, can be and should be determined by a proceeding to enjoin in the Chancery Court. That practice was followed here. When the Eminent Domain proceeding was filed, the Alabama and Vicksburg Railway Company, plaintiff in error, conceiving that it had defenses to the

proposed taking other than the ascertainment of damages, filed this bill in the Chancery Court to enjoin the Eminent Domain proceedings, not as to its power to ascertain damages, but as to its power under the defenses set up in the bill to act at all. All these defenses were set up, and the court having found that the defenses were not good, the injunction was dissolved and the Eminent Domain proceedings ordered to proceed to ascertain the damages for the easement so to be condemned. Thus, the plaintiff in error had every opportunity to be heard and was heard, and this was due process of law within the 14th Amendment.

A reading of the application for the Eminent Domain proceedings will show that the Jackson and Eastern Railway Company sought to acquire only an easement for a switch connection. All of the contentions made by plaintiffs in error were decided against them by this Court in the case of *Louisville & Nashville R. R. Company v. Western Union Telegraph Company*, 170, Miss. 626, 250 U. S. 363, 73 L. Ed. 1032.

PLAINTIFFS' "ISSUE NO. 3," BRIEF P. 42.

The contention here is based on the assumption that the Jackson & Eastern Railway Company sought to acquire in the condemnation proceedings a portion of the main line of the Alabama & Vicksburg Railway Company. We have already seen that no such right was sought to be condemned, and that the Supreme Court of Mississippi has held that the Jackson & Eastern Railway Company sought only an easement, that is, a switch connection. Of course, it is not contended that the Jackson & Eastern had any authority under the laws of Mississippi to acquire any part of the main line of the Alabama & Vicks-

burg Railway Company, or to acquire any right to use its main line. Therefore, the cases cited under issue number three are not pertinent to any real issue in this case, and we will not take up the time of the Court in discussing them.

PLAINTIFFS' "ISSUE NO. 4," BRIEF P. 69.

The main case relied on by the plaintiffs in error is *Lancaster v. G. C. & S. F. R. R. Co.*, 298 Fed. 488. This case was reversed and bill dismissed by the Circuit Court of Appeals for the Fifth Circuit in the case of *Gulf C. & S. F. Ry. Co. v. Texas & P. Railway Co.*, Fed. Rep. Second Series, Vol. 4, page 904.

The issue here propounded is not found in the bill and is without support in law or in fact. The bill made the application for condemnation an exhibit to it, (R. p. 14) and it specifically described the place of the proposed junction which later, generally, is called Curran's Crossing being near the place of the highway crossing and being a suburb of the City of Jackson. The bill, with the place of junction thus specifically set forth, avers that it is not a safe place for a junction, and that no objection was or would be made by the Alabama & Vicksburg Railway Company to a connection if made at a proper place (R. pp. 4, 5, 6). There is no averment in the bill that the certificate of public necessity, or other prerequisite to construction at the point named by the Interstate Commerce Commission, is not given. On the contrary, the bill avers at length the improper and dangerous place proposed for connection (R. pp. 8 to 12), and the crux of the bill is that the place designated in the application is an unsafe and dangerous place. The bill avers that

(page 10) "the proposed junction is near the suburbs of the City of Jackson."

The testimony for the Alabama & Vicksburg Railway Company is directed to the proposition that the proper place for the junction was at a point some distance east of Curran's Crossing and much farther away from Jackson than the proposed point of junction and a point some distance off the direct line between the termini of the Jackson & Eastern Railway Company as described in the application filed with the Interstate Commerce Commission for a certificate of convenience and necessity. Plaintiffs in error had a survey and map made (R. 353-402) to show that the point of the junction which they proposed was a proper place and should be the point selected for the junction, and not the point near Curran's Crossing; and thus the inconsistency of having tried the case on the proposition that the place for the junction designated by Durham and Hayden about six miles east of Jackson was a proper place to make the junction, and then now to insist, in this Court, that the junction could not be made at Curran's Crossing because the Interstate Commerce Commission had not ordered that place to be the point of junction, although this point was a suburb of the City of Jackson (see Durham's testimony, R. 402; Hayden's, R. 353). As shown, *supra*, the Interstate Commerce Commission has no jurisdiction in respect to switch tracks, and when the proposed switch track was submitted to the Interstate Commerce Commission, it held that it had no jurisdiction in respect to switch tracks between independent interstate railroads, but nowhere suggested that the place of the proposed switch, as a matter of fact, was not authorized by the certificate of public necessity; nor did the Alabama & Vicksburg Railway Company, which was notified of the

application to the Interstate Commerce Commission, ever suggest to the Interstate Commerce Commission that the proposed junction at Curran's Crossing was not within the clause of the authority to construct. The authority to construct was to the City of Jackson, and here in process of construction this interchange switch connection is desired at a point near to the City of Jackson and at a point which proper and judicious operation would require. To establish interchange switch track yards outside the City would not show that the railroad was not to be built to the City of Jackson. It is common knowledge that this is very common practice in railroading.

PLAINTIFFS' "ISSUE NO. 5," BRIEF P. 75.

In the last analysis plaintiffs in error contend that their constitutional rights are denied them in that the state courts are undertaking to impose upon them as an important interstate carrier, conditions that are eminently dangerous to the life and limb of their employees and passengers. This contention is predicated upon their alleged five (5) points of danger. See page 2 of their brief, under summary of facts.

It will be remembered that plaintiffs in error selected the forum for the trial of these issues of fact; and the forum thus selected by them tried the issues upon proof offered, and found against the contention of plaintiffs in error touching each and all of the alleged grounds of danger. An appeal was taken by them from this finding of fact to the Supreme Court of the State of Mississippi, where the decree of the Chancellor was affirmed. So far as the alleged grounds of danger are concerned, they present purely a question of fact, and we respectfully submit that an affirmance by the highest court of the state of

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the Chancellor's finding of fact is final and binding on plaintiffs in error. We would submit this point in the case without further comment but for the oft repeated insistence of plaintiffs in error that the place selected is eminently dangerous, despite the contrary finding of fact by the state courts, but we submit with confidence that the finding of fact by the courts on the five (5) points of alleged danger is a proper finding and one warranted by the evidence offered in the case.

Many witnesses were heard for each side and the testimony is in much conflict. Plaintiffs in error introduced nine (9) or ten (10) witnesses, and some of them were men of broad experience in railroad matters, but with such witnesses the probative value of their testimony depends upon their accurate and full knowledge of the facts involved in the particular controversy, and under this observation we desire to make comment upon their testimony.

I. Touching the alleged dangers arising from flood waters.

To determine what effect, if any, the road bed of this defendant in error, would have upon the bridge and main line of the Alabama & Vicksburg Railway Company one must necessarily know the contemplated height of the defendant's fill and the number, location and size of the openings through it for water passage. The proposition appears self-evident to us, and we submit that it finds support in the testimony of Mr. Stamm, the Superintendent of the Alabama & Vicksburg Railway Company and the Vicksburg, Shreveport & Pacific Railway Company, a witness on behalf of the plaintiffs in error. We quote from the printed record on pages 158 and 159:

"Q. Mr. Stamm, you testified about this water backing up and about the effect the building of the Jackson & Eastern embankment would have on the water. Do you know how many openings or conduits for water to pass through are planned in this Jackson & Eastern embankment?

"A. I don't know what is planned, but I know how many openings there is in the bank so far as I can see.

"Q. The bank is built only a little ways?

"A. Yes, sir.

"Q. Now, of course the effect that the Jackson & Eastern embankment would have on the water would depend on the number of openings in the embankment.

"A. And the height of the embankment.

"Q. You don't know how high the bank is going to be after it goes away from the Alabama & Vicksburg right-of-way?

"A. No, sir."

In proof of the dangers from over-flow water plaintiffs in error used nine (9) witnesses, and out of the nine (9) only three (3) of them—E. Ford, W. W. Hayden and E. M. Durham—had any knowledge either of the contemplated height of the defendant's fill or of the openings to be left through it for water passage. And not one of the above three (3) witnesses named predicated his opinion of danger upon either the height of the fill or the number, location, or size of the openings. This is true notwithstanding the fact that defendant's witnesses, Duffee and Stacker, both civil engineers, fully disclosed in their testimony the height of the dump and the number, location

and size of the openings to be left to care for water in case of over-flow. It is especially noticeable that Mr. L. A. Jones, President of the Alabama & Vicksburg Railway Company, was called by plaintiffs in error as a witness in rebuttal, after defendant's proof was all in the record and no question was propounded to him touching either the sufficiency or insufficiency of the openings, or touching the reasonableness or unreasonableness of the height of the defendant's contemplated dump, or fill. We submit that plaintiffs' superintendent, Mr. Stamm, was correct when he testified that a knowledge of the height of the fill and a knowledge of the openings through it were necessary in order for a witness to know the effect, if any, of flood waters on the Alabama & Vicksburg Railway Company's property. We therefore submit that the testimony of the witnesses for plaintiffs in error has little probative value touching this point.

The witnesses offered by defendant in error knew these facts. They made the calculations and determined the facts while seeking, as engineers, a basis of safety for both railroads, and it is therefore, not a surprise to us that the Chancellor who heard this testimony and who visited the scene and made personal observation on the ground, found this issue of fact against the appellants in error.

II. Other alleged grounds of danger.

Under this head we shall discuss the other four grounds of alleged danger together as the observations we desire to make are common to all of them.

The alleged grounds of danger are that the place selected is (a) in a curve, (b) on a fill, (c) near a dirt road crossing, (d) between two trestles. It will be conceded that the ideal is always to be desired. This ideal would

call for a place where there is no curve, no fill, no crossing, and no trestle, but the fact remains that the ideal in railroading can rarely, if ever, be attained. In railroading one must face problems as he meets them. The rule laid down by the Mississippi Supreme Court touching connections between railroads is that one railroad may select a point for a connection with another railroad at any point on the other railroad's line that is reasonable and not unduly dangerous, taking into consideration the rights and interests of both railroads and the rights and interests of the public. See *Alabama & Vicksburg Railway Company, et al. v. Jackson & Eastern Railway Company*, 95 So. 733, and 101 So. 553.

Tested then by this rule, does the evidence in this case show that the place selected for a connection in this case is unreasonable and unduly dangerous, taking into consideration the interests of both parties? Some witnesses for plaintiffs in error made startling statements touching the dangers that would arise from the connection at the point selected, and plaintiffs in error set out said statement in their brief, and for emphasis, repeat them time and time again to this Court. One witness characterizes the point selected as a death-trap, and we think the witness was honest. His trouble was that he was laboring under a glaring mis-apprehension of the facts. The truth is, all of the witnesses for plaintiffs in error testified under two material mis-apprehensions touching the facts of the case. The first mis-apprehension is that the super-elevated outer rail of plaintiff's line around this curve would have to be lowered to conform to defendant's connecting line. The other is that defendant under its eminent domain application would be authorized to run its engines, cars and trains ad libitum

on to and over plaintiff's main line. We respectfully submit that both these positions are erroneous, and arise, doubtless, from a misunderstanding of the terms and conditions of defendants application for eminent domain and the rights of defendant thereunder. This application nowhere, as we submit, requires that the super-elevated outer rail on defendant's main line would have to be lowered. The fact is, it provides that the installation is to be made "under competent supervision, and in a workmanlike manner, in accordance with the standard practice of the Alabama & Vicksburg Railway Company." See application herein set out.

It is not difficult to understand the ominous dangers testified to by Evans, Graham and others, and the protests made by some of the employees of the Alabama & Vicksburg Railway Company when we understand that they testified under such grave mis-apprehensions of the true facts. If the application required the lowering of the super-elevated rail around the curve on the main line of plaintiffs in error and if the application authorized the use of the Alabama & Vicksburg Railway Company's main line by the Jackson & Eastern Railway Company at will, then we admit there would be danger, whether the Alabama & Vicksburg maintained its accustomed rapid operations at this point as shown by the testimony, or not. But the true facts are different. There will be no change in the super-elevated rail of the Alabama & Vicksburg Railway Company's main line. There will be no change in its line except the insertion of a switch, and no authority will be given to the Jackson & Eastern Railway Company to use any part of the main line of the Alabama & Vicksburg Railway Company. Its only authority and the only authority sought in its application for eminent do-

main, is to have the Alabama & Vicksburg Railway Company deliver to it and over this switch connection, such cars as shall come to it at this point from other lines, and, to receive from it such cars as are tendered at this point for transportation over the Alabama & Vicksburg and other lines. The Alabama & Vicksburg Railway Company will do the act of actually delivering the cars to the Jackson & Eastern and of receiving the cars from it with no right or authority on the part of the Jackson & Eastern Railway Company to enter the switch connection on to the main line of the Alabama & Vicksburg Railway Company.

It is true that plaintiffs in error insist in their brief that the ultimate purpose of the Jackson & Eastern Railway Company is to use the bridge, the main line, and depot facilities, of the Alabama & Vicksburg Railway Company, but we earnestly submit that no such purpose is disclosed by the petition for eminent domain. If it were true that the Jackson & Eastern Railway Company hoped in the future to work out a method by which it could economize expenditures of large sums of money by a joint use of the Alabama & Vicksburg facilities, it would have no bearing in this case, and in support of that proposition we cite the case of *Louisville & Nashville Railroad Company v. Western Union Telegraph Company*, 250 U. S. 363, 63 Lawyers' Ed. 1032. Should the Jackson & Eastern Railway Company in the future undertake to acquire the use of the property of plaintiffs in error, they would have their day in Court. The case above cited is pertinent and to the point.

Stripped then of all impertinent inquiries, and misapprehensions of fact, we have a situation left that would

not interfere with any train operated by the plaintiffs in error except such trains or engines as would be stopped at this switch connection for the purpose of interchanging cars. The alleged dangers from the curve, fill, dirt crossing, and trestles would have no application to any passenger train, and would effect no freight train except such local freight train as might stop to engage in the interchange of cars. The only possible added hazard would arise from having the switch on a curve, and under the proof in this case all railroads maintain switches on curves and on the outside of curves. This record shows four (4) such curves in less than one hundred miles of the place in question on the Alabama & Vicksburg Railway Company's main line, and the proof further shows that plaintiffs in error run their trains at a high rate of speed around such curves and over such switches, and it stands to reason that this would not be done if the hazard were great.

Touching the trains or engines that would stop at this switch to make interchange of cars, we submit that the hazard would not be enhanced to any material extent by the curve, the fill, or the dirt road crossing. In support of this statement see the testimony of Stacker, pages 299 to 303 of the record, and the testimony of Vick, pages 410 to 416 of the record.

The witness Vick had had broad experience as a switchman, as yard master, and as conductor on a freight train, and in his testimony he thoroughly demonstrates the various steps that would be taken in switching cars at this point for interchange, and from his testimony it clearly appears that neither the curve, the fill, nor the dirt road crossing is a material objection. He further demonstrates

that switching can be done with little, if any, interference from the trestles, and Mr. E. Ford, Assistant to the President of the Alabama & Vicksburg Railway Company and the Vicksburg, Shreveport & Pacific Railway Company, also shows in his testimony that any interference from the trestles could easily be remedied by the building of a plank walk. See Ford's testimony, page 376 of the record. We quote from Mr. Ford's testimony on direct examination:

"Q. It has been suggested that there could be provided walkways?

"A. You can do that.

"Q. Is it satisfactory?

"A. It can be done.

"Q. Is it satisfactory?

"A. This provides a place for them to walk.

"Q. Would that eliminate the objection?

"A. It would eliminate them having to walk over the cars.

"Q. Would it eliminate the objection to the trestles?

"A. They would have a place to walk, say if they had a walkway four feet long, four feet in width."

This witness finally, under pressure from counsel, stated that a walk would be very objectionable because the timbers would rot, but we submit that his proof shows conclusively that the walk could be provided, but whether the walks were provided or not, the testimony of Mr. Vick shows that the presence of these trestles would not be material objection in switching cars for the interchange tracks.

The Chancellor, at the request of counsel, visited the scene and made personal observations touching the flood water conditions, the curve, the fill, the dirt road crossing and the presence of the trestles, and after having heard the testimony of all the witnesses, found as a fact that the place selected was not an unduly dangerous place, and that the place selected was a reasonable place for the location of the interchange switch connection between these two roads. The Supreme Court of Mississippi, on review of this case, affirmed the finding of the Chancellor, and we submit that the affirmance by the highest court of our state is final and binding on plaintiffs in error.

We adopt and refer the Court to our brief filed on petition for a writ of certiorari. We earnestly submit that the writ of error should be dismissed or affirmed, and that the petition for writ of certiorari should be denied. All of which is respectfully submitted.

MARCELLUS GREEN,
GEORGE B. NEVILLE,
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*Attorneys for Defendant in Error and Respondent,
Jackson & Eastern Railway Company.*

MARCH 1ST, 1926.

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SUPREME COURT OF THE UNITED STATES.

No. 244.—OCTOBER TERM, 1925.

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Alabama & Vicksburg Ry. Co. et al., Petitioners, vs. Jackson & Eastern Ry. Co.	}	On Writ of Error to the Supreme Court of Mis- sissippi.
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[May 24, 1926.]

Mr. Justice BRANDEIS delivered the opinion of the Court.

The Alabama & Vicksburg Railway and the Jackson & Eastern Railway are both Mississippi corporations. Each owns and operates in intrastate and interstate commerce a railroad within that State. The latter instituted a proceeding under a state law to secure by eminent domain a connection with the former's line at a point east of the City of Jackson, called Curran's Crossing. Prior to instituting the eminent domain proceeding the Jackson & Eastern had secured from the Interstate Commerce Commission a certificate under paragraphs 18-20 of § 1, authorizing the extension of its road from Sebastapol, Mississippi, to Jackson. The order made no reference to Curran's Crossing, or to any connection with the Alabama & Vicksburg. *Public Convenience Certificate of Jackson & Eastern Ry. Co.*, 70 I. C. C. 110, 495. Thereafter, but also before instituting the eminent domain proceeding and before building the extension authorized, the Jackson & Eastern applied to the Commission for an order authorizing it to connect with the main line of the Alabama & Vicksburg at Curran's Crossing, and requiring the latter to grant a joint use of its main line from that point into the City of Jackson. This application, which had apparently been filed under paragraph 9 of § 1 of the Interstate Commerce Act, was withdrawn without a hearing. Compare *United States v. Baltimore & Southwestern R. R. Co.*, 226 U. S. 14. No further application was made to the Commission.

By the constitution and statutes of Mississippi a railroad corporation organized under the laws of that State may "cross, intersect, join, or unite its railroad with any other railroad hereto-

fore or hereafter constructed at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turn-outs, sidings, switches, and other conveniences, and . . . [may] exercise the right of eminent domain for that purpose." Constitution of 1890, §§ 184, 190; Hemingway's Code, §§ 6722, 6725, 6728. This right of eminent domain is exercised by proceedings in a special court which has jurisdiction to determine only the amount of the damages payable. The special court cannot pass upon the right of a plaintiff to institute the proceeding or upon any defense or other objection. Nor can any such question be raised upon an appeal from the judgment of the special court. The sole remedy of the objecting railroad is a separate proceeding to be brought in a court of equity. Hemingway's Code, § 1492; *Louisville & Nashville R. R. Co. v. Western Union Tel. Co.*, 234 U. S. 369, 378-380; *Vinegar Bend Lumber Co. v. Oak Grove & G. R. R. Co.*, 89 Miss. 84; *Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co.*, 131 Miss. 857, 874.

This suit was brought by the Alabama & Vicksburg in the appropriate Chancery Court of the State to enjoin the Jackson & Eastern from pursuing the eminent domain proceeding. The bill alleged willingness to permit a junction, but asserted that the point selected by the defendant was an improper one, would imperil the safety of life and property, would burden interstate commerce and would be prejudicial to the plaintiff's interests. It asserted, among other grounds of relief, the claim that the Interstate Commerce Commission has exclusive jurisdiction over the establishment of junctions or physical connections between railroads engaged in interstate commerce, that the Commission had not authorized the connection here in question, and that the institution of eminent domain proceedings was therefore in violation of the federal law. A restraining order issued upon the filing of the bill. Later, the Chancellor sustained a demurrer to the bill for want of equity; dissolved the injunction; and denied supersedeas pending an appeal to the Supreme Court of the State. That court allowed a supersedeas, 129 Miss. 437; overruled the demurrer; reversed the decree; and remanded the case for further proceedings. It did this on the ground that, while under the state law the connection might ordinarily be made at such point on the other's line as the railroad seeking the junction might desire, the place selected

must be a proper one, and the bill alleged that the particular junction sought was not. 131 Miss. 857, 874. Upon that issue the Chancellor then heard the case on the evidence; found that the proposed connection was a proper one; dissolved the injunction; and dismissed the bill. That decree was affirmed upon a second appeal to the Supreme Court. 136 Miss. 726. In affirming the decree, the highest court of the State overruled the contention of the Alabama & Vicksburg that the Interstate Commerce Commission had exclusive jurisdiction over the establishment of junctions between railroads engaged in interstate commerce; held that Congress had not taken full control of the subject; and concluded that the authority granted by the state law to secure junctions did not interfere with interstate commerce to an appreciable degree, if at all. The case is here on writ of error with supersedeas granted by the Chief Justice of the State. A petition for writ of certiorari was also filed, consideration of which was postponed. As the case is properly here on writ of error, the petition is dismissed.

In *Wisconsin, Minnesota & Pacific R. R. v. Jacobson*, 179 U. S. 287, decided in 1900, this Court sustained an order of a state commission which, at the instance of shippers, had directed two railroads of the State engaged in interstate and intrastate commerce to provide a physical connection between their lines. The state commission had found that the connection was required for intrastate commerce; and this Court concluded that the connection ordered could not prejudice interstate commerce. Since then the authority of the Interstate Commerce Commission has been greatly enlarged and the power of the States over interstate carriers correspondingly restricted. Prominent among the enlarged powers of the federal Commission is the control conferred over construction and equipment of railroads, over their use by other carriers and, generally, over the relation of carriers to one another. While none of the amendments in specific terms confer upon the Commission exclusive power over physical connections between railroads engaged in interstate commerce, it is clear that the comprehensive powers conferred extend to junctions between main lines like those here in question.

The Act to Regulate Commerce, February 4, 1887, c. 104, 24 Stat. 379, provided, by what is now paragraph 3 of § 3, that carriers shall "afford all reasonable, proper, and equal facilities for the

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interchange of traffic between their respective lines;" but it did not confer upon the Commission authority to permit and to require the construction of the physical connection needed to effectuate such interchange. Paragraph 9 of § 1, introduced by Act of June 8, 1910, c. 309, § 7, 36 Stat. 539, 548, required a carrier engaged in interstate commerce to construct a switch connection "upon application of any lateral, branch line" and empowered the Commission to enforce the duty; but that provision was held applicable only to a line already constituting a lateral branch road. *United States v. Baltimore & Ohio Southwestern R. R. Co.*, 226 U. S. 14. The Act of August 24, 1912, c. 390, § 11, 37 Stat. 560, 568, amending § 6 of the Act to Regulate Commerce, empowered the Commission to require railroads to establish physical connection between their lines and the docks of water carriers; but the provision did not extend to connections between two rail lines. It was not until Transportation Act, 1920, c. 91, 41 Stat. 456, conferred upon the Commission additional authority, that it acquired full power over connections between interstate carriers. By paragraphs 18-20 added to § 1, it vested in the Commission power to authorize constructions or extensions of lines, although the railroad is located wholly within one State; and by paragraph 21 authorized the Commission to require the carrier "to extend its line or lines." By paragraph 4 of § 3 it empowered the Commission to require one such carrier to permit another to use its terminal facilities "including main-line track or tracks for a reasonable distance outside of such terminal."

The only limitation set by Transportation Act, 1920, upon the broad powers conferred upon the Commission over the construction, extension and abandonment of the lines of carriers in interstate commerce, is that introduced as paragraph 22 of § 1, which excludes from its jurisdiction "spur, industrial, team, switching or side tracks, located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation." It is clear that the connection here in question is not a track of this character. Compare *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, No. 417, decided March 1, 1926. The proposed junction is between the main lines of the two railroads. The point of junction is on the main line of the Alabama &

Vicksburg, near its entrance into the City of Jackson. In support of the objection that a junction there would be dangerous, it was shown that the connection would be located between two trestles, near a highway crossing, on a curve, on a fill, and within the flood area of Pearl River. The establishment of the junction at that point would, if the objection is well founded, obviously imperil interstate commerce. The fact that it may do so, shows that the jurisdiction of the Commission over such connections must be exclusive, if the duty imposed upon it to develop and control an adequate system of interstate rail transportation is to be effectively performed. Moreover, the establishment of junctions between the main lines of independent carriers is commonly connected with the establishment of through routes and the interchange of car services, and is often but a step toward the joint use of tracks. Over all of these matters the Commission has exclusive jurisdiction.

It is true that in this case the state court found that the place selected for the junction was a proper one. But the power to make the determination whether state action will obstruct interstate commerce inheres in the United States as an incident of its power to regulate such commerce. Compare *Colorado v. United States*, No. 195, decided May 3, 1926. In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under paragraph 3 of § 3 to require the establishment of connections between the main lines of carriers was asserted by it in *Pittsburg & West Virginia Ry. Co. v. Lake Erie, Alliance & Wheeling R. R.*, 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in *Breckenridge Chamber of Commerce v. Wichita Falls, Ranger & Fort Worth R. R. Co.*, 109 I. C. C. 81. That its jurisdiction is exclusive was held in *People v. Public Service Commission*, 233 N. Y. 113, 119-121. Compare *Lake Erie, Alliance & Wheeling R. R. Co. v. Public Utilities Commission*, 109 Ohio St. 103.

Writ of certiorari denied.

Decree reversed.